Neutral Citation No: [2024] NIDiv 6	*Ref:* **KEE12507**
	ICOS No: **24/11205/01** **24/11205/02** **24/11205/03**
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **25/04/2024**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

KING'S BENCH DIVISION
(JUDICIAL REVIEW)

_____

BEFORE A DIVISIONAL COURT

_____

IN THE MATTER OF AN APPLICATION BY KIERAN RAFFERTY FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

_____

Mr Rafferty appeared as a Litigant in Person
Mr Philip Henry KC for the Proposed Respondents PPS & PSNI
Mr Ben Thompson for the Proposed Respondent NICTS

_____

Before: Keegan LCJ and Humphreys J

_____

KEEGAN LCJ (*delivering the judgment of the court ex tempore*)

Introduction

[1] We are in a position to give a ruling this afternoon in this application. This ruling will be committed to writing in due course and sent to the parties.

[2] This is an application for leave to apply for judicial review brought by Mr Kieran Rafferty in relation to four criminal cases that have been brought against him in the magistrates' court in Northern Ireland.

[3] The *ex parte* docket that grounds this application is undated and defined simply as an application for "damages and that all complaints would be set aside." The proposed respondents range from the Public Prosecution Service, the police, two former Chief Constables of the Police Service and two district judges.

This challenge

[4] Whilst the *ex parte* docket remains undefined, there is an Order 53 statement attached which is more comprehensive. This sets out the impugned decisions in relation to four criminal prosecutions, and under the grounds of challenge further definition is given to what this case is about from Mr Rafferty's perspective. The grounds of challenge he maintains are:

(i) Illegality – in that he contends that the impugned decision or decisions were unlawful in the following respects:

  (a) abuse of process at common law; and

  (b) fraud by omission.

(ii) Procedural unfairness.

(iii) Irrationality.

(iv) Improper motive and bad faith.

(v) Breach of statutory duty/requirement.

Various forms of relief are sought which boil down really to a quashing of the decisions to prosecute and/or a declaration of incompatibility under the Human Rights Act 1998.

[5] In the Order 53 statement the applicant applied for interim relief, but this has not been pursued. He also requested expedition in the proceedings. In that regard we have convened a full hearing today. Mr Rafferty has appeared as a litigant in person. In addition to the Order 53 statement that I have summarised, he has filed a written argument with us that we have received today and considered, and he has made oral submissions as he is entitled to do in this judicial review.

[6] We have also heard from Mr Henry, for the proposed respondents the PSNI and the PPS, and considered his helpful position paper. Mr Thompson, on behalf of the proposed respondent the Northern Ireland Courts and Tribunals Service has adopted the usual position from *Re Darley.*

[7] We invited the PPS to provide some background information and grounding documentation in relation to the criminal prosecutions to assist this court in advance of any grant of leave. There is no legal requirement to file evidence at the leave stage. Nonetheless, in some cases we do invite such evidence to be put before us and, in this case, it has proven to be helpful to us in terms of summarising the issues. That is the affidavit of Joelle Black dated 20 March 2024.

[8] In the affidavit Ms Black sets out details of the four different criminal cases that are at issue in the case. She states that she is familiar with the duty of candour which applies in judicial review and that she has complied with it and brought together information on file in relation to the four cases.

[9] In brief summary, drawing from the affidavit, it is clear that one of the cases, case 3, has already concluded but the other cases are outstanding.

[10] Broadly, case 1, relates to dangerous driving, this was by way of charge sheet and that is exhibited to the affidavit. The applicant was charged by police with various motoring offences relating to two dates 24 November 2022 and 10 May 2023. The applicant pleaded not guilty to these offences on 17 August 2023, and they were listed for hearing on 8 March 2024, however, that has been adjourned pending these proceedings.

[11] Case 2 is a case under the broad heading "threatening communications" which is that the applicant is currently being prosecuted for sending some threatening communications to public figures. The affidavit states that the applicant failed to attend the first listing and an arrest warrant was issued in relation to that executed nearly a year later. It also refers to the fact that there were various iterations of the offences put before the court, but that the applicant is currently being prosecuted for a number of offences which are alleged to have occurred in October 2021 and November 2021. That case was listed for 4 April 2024 for mention and again will be heard after the judicial review is determined. Again, there is documentation provided by way of this affidavit, including the charge sheet, the warrant and prosecution papers.

[12] Case 3 relates, again, to driving offences. As the affidavit states, unlike the first two cases, this case began as a PPS summons rather than a charge sheet. The history of this case is set out in the paperwork. This is a case where the applicant was convicted in his absence on 14 November 2023 and sentenced to a £200 fine and disqualified from driving for three months and the relevant documentation is also exhibited to the affidavit.

[13] Case 4 is under the broad heading "driving whilst disqualified". This refers to a file submitted to the PPS on 23 January 2024. The applicant entered a not guilty plea to two offences of driving whilst disqualified and no insurance on 26 February 2024, and the matter was listed on 24 April, which is now adjourned as it was for contest, pending this judicial review. Again, the relevant documentation is provided in relation to that criminal case.

[14] The affidavit sets out a summary of the prosecution case against the applicant. It also refers to the fact at para [15] of this affidavit that both in this first case and the malicious communications case, which is case 2, the defendant failed to appear and arrest warrants were issued by District Judge Kelly. The history is set out in relation

to this, and the warrants are attached to the affidavit. Just in relation to those warrants there was a period on remand that the applicant served having failed to answer the warrant until a High Court bail order was made on 11 July 2023. In any event, all of the warrants save one in 2022, which could not be found in advance of this hearing, are now provided in this paperwork.

[15] In addition, we have also received a Notice of Motion from Mr Rafferty which purports to be a Notice of Motion "to show cause of a failure to supply specific disclosure." It is stamped 15 April 2024. Mr Rafferty in the accompanying affidavit sets out his case that there should be disclosure in this judicial review court of various matters, not least the names of lay magistrates to whom complaints were made and others dealing with his case. We note from the application that he also seeks subpoenas for various persons involved with his cases to attend in this court. We have read this application, and we will deal with it today as well as the application for judicial review.

Consideration

[16] Having considered that factual background and the applications that we have to decide, we turn to explain our decision in this case as follows. Firstly, we point out that this is an application for leave to apply for judicial review. This is a preliminary stage in any judicial review. A Divisional Court has been convened as this matter is a criminal matter. But, in any judicial review, when dealing with leave the court must consider the test which is whether an applicant has an arguable case with a reasonable prospect of success. This is well-trammelled ground and a test that has been reiterated in our courts, most recently by Lord Justice McCloskey in *Re Ni Chuinneagain's* application, which is a decision of the Court of Appeal reported at [2022] NICA 56.

[17] As a preliminary matter, we mention the fact that delay issues have self-evidently arisen in this case given the number and vintage of some of the cases that are at issue. However, pragmatically Mr Henry has, whilst raising the issue, implicitly asked us to deal with the merits of the application and we do so whilst noting that there are some issues of delay at large.

[18] Turning then to the substance of the case, the territory with which this case is concerned has recently been dealt with before the same composition of this Divisional Court in a case of *Anthony Parker and James Caldwell's Application for leave to apply for Judicial Review* [2023] NIKB 24. We provided a written copy of this decision to Mr Rafferty at a case management review so that he could acquaint himself with the principles of law that are established in this case, and which draw on principles from the highest courts in our jurisdiction.

[19] Without reciting again all of the matters within *Parker & Caldwell* we turn to the first point that is raised in the judgment that we reiterate in this case as follows:

> "[12] It is a well-established principle in the field of criminal law that legal issues which can be dealt with in the context of extant criminal proceedings should not be brought before the Divisional Court, save in exceptional circumstances."

[20] That principle flows from a decision of *R v DPP ex p Kebilene* [2000] 2 AC 326. In a case in which I gave judgment of *Re Bryson and McKay's Application* [2021] NIQB 110, I also said this:

> "This court is a court of last resort, meaning the judicial review court. The specialist criminal framework is better suited to determination of these types of issues. The applicants are not prejudiced by this outcome because they can bring pre-trial applications at trial including abuse of process and thereafter there are appeal rights embedded in the criminal law process."

[21] We reiterate the fact that satellite litigation is to be deprecated, particularly, in the criminal field save in exceptional circumstances where there is something distinct in public law terms that the judicial review court needs to grapple with.

[22] The second point that we take from the *Parker and Caldwell* case, which we must repeat, given the representations made to us, is that in that case we comprehensively dealt with the issue of the validity of criminal summonses before the magistrates' court and how complaints can be laid within the legal framework.

[23] We deal with this issue in the *Parker & Caldwell* judgment applying the Magistrates' Courts (Northern Ireland) Order 1981 and also section 93 of the Justice Act (Northern Ireland) 2015. The latter 2015 Act introduced a new procedure for the issue of summonses which compliments the Magistrates' Court Rules, and all of this is set out in the judgment that I have referred to. What we say at para [27] of *Parker and Caldwell* is, to our mind, clear and should be clear to any litigant coming before the court in this area. We say this:

> "[27] From these various statutory provisions and authorities, the following principles can be distilled:
>
> (i) The jurisdiction of the magistrates' court is engaged by the laying of a complaint;
>
> (ii) A complaint is duly laid when it is received by any member of staff in the relevant court office;

(iii) A complaint does not require to be in writing, it can be made orally or by electronic means, and does not require to be on oath;

(iv) A complaint does not have to be received personally by a lay magistrate;

(v) The receipt of a complaint is an administrative rather than a judicial act and can therefore be delegated;

(vi) The issue of a summons cannot be delegated but must be done by an individual with legal authority to do so, which includes a public prosecutor;

(vii) Any objection to a defect in form or substance of a complaint or summons can only be made to the court when the other party has been misled by the defect."

[24] In *Parker & Caldwell* we found that the complaints in the summonses were valid. They were laid electronically within the statutory time limit, were received by a relevant member of court staff, were issued by public prosecutors who had authority to do so and, as such, we found in that case that the applicants' claims as to the complaints were unarguable.

[25] The same finding translates to this case. Having now seen the complaints laid out in this case, there can be no argument that there is any issue with the validity of the complaints as a matter of law. And, so, this aspect of the judicial review challenge raised by Mr Rafferty is unarguable and must clearly be dismissed.

[26] The other aspect of the case that is before us focusses again on a matter which we have already looked at in *Parker and Caldwell*, that is the jurisdiction of the magistrates' court. This matter is dealt with in the judgment. We need say no more than repeat what we said previously at paras [29]-[33] of the judgment. The jurisdiction of the magistrates' court is set out in the legislation that we refer to. The legislation deals in this area with speed limits, road safety measures and matters of criminal law clearly. This law does not simply apply to civil servants, as we have said, in our previous judgment. The applicants in the previous case, as in this case, contended that as citizens of Eire they are not subject to the jurisdiction of the magistrates' court in Northern Ireland. Mr Rafferty has implicitly also made that case, but this is, of course, incorrect because the offences of which he is charged apply to the territorial jurisdiction of Northern Ireland.

[27] There can be no issue about the jurisdiction of the magistrates' court in relation to the legitimacy of the judicial office holders who populate the courts either, as we

have previously opined. That aspect of this judicial review is also unarguable and must be dismissed.

[28] The further claims in relation to abuse of process which purport to be related to court proceedings on 30 September 2022, are not evidentially made out in our view. There is, in fact, a query as to whether or not the applicant is accurate in his recall of events. In our view, there is no claim which could validly be supported in the evidence that the applicant has been prevented from making his case and his defence of his case before the criminal courts. To be clear we find no breach of procedural fairness in this case, particularly, in a case where the applicant himself has chosen to absent himself from the criminal courts on numerous occasions, causing bench warrants to be issued. We dismiss this aspect of the case which is framed as an abuse of process case.

[29] The ancillary arguments that are made out in the paperwork are many and various, none of which we find any merit in. Briefly, for the sake of completeness only, we record that this is clearly not a military court as Mr Rafferty suggests. We reiterate that the laws of the United Kingdom apply. We find no discernible claim under the European Convention on Human Rights. It is nonsensical to suggest that this case relates to public law rather than criminal law in terms of the criminal complaints. There is no basis for saying there is some conspiracy against Mr Rafferty within the courts, the Geneva Convention is clearly not applicable to this case.

[30] Other matters of complaint against police are clearly not matters for the judicial review court. No breach of statutory duty or irrationality is discernible on the part of the courts seised of these cases or any decision makers. Therefore, all of the other arguments that are made in the Order 53 statement and in the written skeleton argument are, in our view, unarguable and must be dismissed.

Conclusion

[31] Drawing together all that we have said, we find that the arguments made by Mr Rafferty in this case are manifestly without any foundation and unarguable and have no reasonable prospect of success. This is for the reasons we have given, and for reasons which largely replicate the view of this court, promulgated in the case of *Parker and Caldwell*. The application for leave to apply for judicial review is refused. We also dismiss the Notice of Motion which we have considered.

[32] Mr Rafferty may, of course, now exercise his rights in law to contest the criminal charges that are laid against him. He can do so before the specialist criminal courts. He is entitled to the presumption of innocence. He may also make any ancillary applications as to abuse of process or otherwise in the criminal courts within the criminal law framework.