

No. 1

## SUPREME COURT

## Application for Leave and Notice of Appeal

## For Office use

Supreme Court record number of this appeal	107/17
Subject matter for indexing	

Leave is sought to appeal from	
<input checked="" type="checkbox"/> The Court of Appeal	<input type="checkbox"/> The High Court

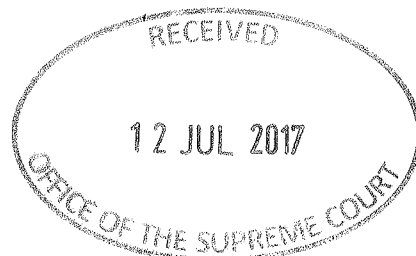
[Title and record number as per the High Court proceedings]

Lucy Carr	V	Judge HENEAS McPARTHY
High Court Record Nr		Court of Appeal Record Nr
Date of filing	12 <sup>th</sup> JULY 2017	
Name(s) of Applicant(s)/Appellant(s)	LUCY CARR.	
Solicitors for Applicant(s)/Appellant(s)		
Name of Respondent(s)	JUDGE HENEAS McPARTHY,	
Respondent's solicitors	Chief Prosecution Solicitor for D.P.P.	
Has any appeal (or application for leave to appeal) previously been lodged in the Supreme Court in respect of the proceedings?		
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
If yes, give [Supreme Court] record number(s)		

Are you applying for an extension of time to apply for leave to appeal?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If Yes, please explain why		

## 1. Decision that it is sought to appeal

Name(s) of Judge(s)	MR JUSTICE BERWINGHAM
Date of order/ Judgment	MR JUSTICE MANNON MR JUSTICE HEDIGAN 21 <sup>st</sup> JUNE 2017



## 2. Applicant/Appellant Details

Where there are two or more applicants/appellants by or on whose behalf this notice is being filed please provide relevant details for each of the applicants/appellants

Appellant's full name	
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Original status

<input type="checkbox"/>	Plaintiff
<input checked="" type="checkbox"/>	Applicant
<input type="checkbox"/>	Prosecutor
<input type="checkbox"/>	Petitioner

<input type="checkbox"/>	Defendant
<input type="checkbox"/>	Respondent
<input type="checkbox"/>	Notice Party

<b>Solicitor</b> N.A.			
Name of firm			
Email			
Address	Telephone no.		
	Document Exchange no.		
Postcode	Ref.		

How would you prefer us to communicate with you?

<input type="checkbox"/>	Document Exchange	<input type="checkbox"/>	E-mail
<input type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

<b>Counsel</b> N.A.			
Name			
Email			
Address	Telephone no.		
	Document Exchange no.		
Postcode			

<b>Counsel</b> N.A.			
Name			
Email			
Address	Telephone no.		
	Document Exchange no.		
Postcode			

If the Applicant / Appellant is not legally represented please complete the following

Current postal address	"AR D'ISH" Russell Rd, Mungret, Co. Limerick
e-mail address	Lucycara633@gmail.com
Telephone no.	089/2471966

How would you prefer us to communicate with you?

<input type="checkbox"/>	Document Exchange	<input checked="" type="checkbox"/>	E-mail
<input checked="" type="checkbox"/>	Post	<input type="checkbox"/>	Other (please specify)

### 3. Respondent Details

Where there are two or more respondents affected by this application for leave to appeal, please provide relevant details, where known, for each of those respondents

Respondent's full name	DISTRICT JUSTICE JANEAS McCARTHY
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Original status	<input type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant	Is this party being served with this Notice of Application for leave?	
	<input type="checkbox"/> Applicant	<input checked="" type="checkbox"/> Respondent		
	<input type="checkbox"/> Prosecutor	<input type="checkbox"/> Notice Party		
	<input type="checkbox"/> Petitioner			
Yes		<input checked="" type="checkbox"/>	No	

Solicitor	CHIEF PROSECUTION SOLICITOR for the P.P.P.		
Name of firm			
Email			
Address	Telephone no.		
	Document Exchange no.		
	Ref.		
	Postcode		

Has this party agreed to service of documents or communication in these proceedings by any of the following means?

<input type="checkbox"/> Document Exchange	<input checked="" type="checkbox"/> E-mail
<input checked="" type="checkbox"/> Post	<input checked="" type="checkbox"/> Other (please specify) By hand

Counsel			
Name			
Email			
Address	Telephone no.		
	Document Exchange no.		
	Postcode		

Counsel			
Name			
Email			
Address	Telephone no.		
	Document Exchange no.		
	Postcode		

If the Respondent is not legally represented please complete the following

Current postal address	
e-mail address	
Telephone no.	

Has this party agreed to service of documents or communication in these proceedings by any of the following means?

<input type="checkbox"/> Document Exchange	<input type="checkbox"/> E-mail
<input type="checkbox"/> Post	<input type="checkbox"/> Other (please specify)

#### 4. Information about the decision it is sought to appeal.

4. The Court of Appeal, on 19/6/2017, had before it a complaint that District Judge Aeneas McCarthy, had intentionally infringed the rights of the Applicant to Fair Procedure as laid down in Article 40.3 of the Constitution for which the Appellant had, in accordance with O.84 r22 (as amended) of the Rules of the Superior Courts, justifiably, named the Judge for Mala Fides. The Court of Appeal held that the matter was not a suitable case for Judicial Review.

The Court of Appeal heard that the Appellant stands charged with, the Indictable Crime of criminal damage to a front doorstep ornament valued €10.

The State's case rests on the existence of a damaged ornament. (The Appellant denies the charge vehemently.)

Before the High Court; Mr Justice Noonan, 20/2/2017; was the fact that Appellant had, on 18th March 2015, applied to the District Court for an Order of Disclosure and was granted same. No disclosure of a damaged ornament was made.

The Court of Appeal had before it that the Appellant had applied to the District Court to strike out the matter on the grounds that no Corpus Delicti was exhibited, the District Judge, in refusing to strike out the matter, did deliberately and consciously extinguish the Appellant's right to Fair Procedure as laid down in Article 40.3 of the Constitution, and under the Irish European Convention on Human Rights Act.

B/The Court of Appeal did apparently, misapprehend Appellant's complaint, apparently, without examining the matter fully and adopted the statement of the High Court Judge that Appellant was seeking to have the merits of a District Court case reviewed by the High Court. The High Court Judge stated, "it seems to me that what you are complaining about is a refusal by Judge McCarthy to strike out the claim on certain grounds of complaint, including that somebody lied on oath in his court, and also that there was a failure to comply with a disclosure order"...."Judicial review is not really concerned with matters of evidence before the District Court"

The Applicant is at pains to point out that the record shows that that was by no means what the Applicant put before the High Court, she did not refer to any evidence before the District Court, and when she tried to disabuse the High Court of its misreading she was not allowed to do so as will be clear from the transcript 20/2/2017 to which she will refer when produced, which, incidentally, she was given by the State, by order of the President of the Court of Appeal on 12/6/2017, after she had completed her application to the Court of Appeal, which put it outside her power to direct the attention of the Court of Appeal to the fundamental error set out in the judgement of the High Court. The Appellant relied on the Court of Appeal to read the said transcript with the appeal documents.

The High Court, the Order of which was adopted by the Court of Appeal, opined in the transcript, to which she will refer when produced that the proper respondent was the DPP or

the guard, and while the Appellant intends to take appropriate legal action against the said entities and will do so in due course, she was deprived of her Constitutional right to Fair Procedure and Due Process under the Law by the deliberate and conscious act of the District Court Judge; It is notable, however, that in that phrase, the High Court, as adopted by the Court of Appeal, acknowledged Unfair Procedure

## **5//Reasons why the Supreme Court should grant leave to appeal**

5.1// Appellant submits that the decision sought to be appealed was made in flagrant disregard of Applicant's Constitutional Right to Fair Procedure in accordance with Order 40.3 of the Constitution.

The judgement of the Court 19/5/2017 delivered by Mr Justice Hedigan wherein he stated, in upholding the judgement of Judge Noonan in the High Court, "Essentially he indicated that what she was complaining about was a refusal to strike out the claim on certain grounds of complaint including that somebody lied in Court."

That Statement indicates that there was failure on the part of the Court of Appeal to review the findings of the High Court.

The record shows that nobody gave evidence before the District Court, accordingly no one lied. The Appellant repeated several times in her written and oral submissions that this is a "missing evidence case" and as it is the Corpus Delicti that is missing, there is not so much a "real risk" that she would not have a fair trial as an absolute certainty that she would not have such.

For that reason the Appellant prays the Court to

Grant leave to appeal in the interest of justice and, arising from that, as a matter of general public importance.

2//The Court of Appeal in rejecting the Appellant's prayer has given LICENCE to the District Court henceforth to reject flagrantly all claims by any Defendant to Fair Procedure. The Appellant submits that this is an appalling vista and is a matter of general public importance and prays the Supreme Court on that account to grant leave to appeal.<sup>4</sup> Information about the decision it is sought to appeal. //

A/The Court had before it a complaint that District Judge Aeneas McCarthy, had intentionally infringed the rights of the Applicant to Fair Procedure under article 40.3 of the Constitution for which the Appellant had, in accordance with O.84 r22 (as amended) of the Rules of the Superior Courts, justifiably, named the Judge.

The Court of Appeal held that the matter was not justiciable by the Superior Courts.

The Appellant stands charged with, the Indictable Crime of criminal damage to a front door ornament valued €10.

The State's case rests on the existence of a damaged ornament. The Appellant denies the charge vehemently.

Before the High Court was the fact that Appellant had, on 18th March 2015, applied to the District Court for an Order of Disclosure and was granted same.

No disclosure of a damaged ornament was made. The Court of Appeal had before it that the Appellant had applied to the District Court to strike out the matter on the grounds that no Corpus Delicti was exhibited, the District Judge in refusing to strike out the matter, did deliberately and consciously extinguish the Appellant's right to Fair Procedure as laid down in Article 40.3 of the Constitution.

B/The Court of Appeal misapprehended Appellant's complaint without examining the matter, and adopted the statement of the

High Court Judge that Appellant was seeking to have the merits of a District Court case reviewed by the High Court.

The High Court Judge stated "it seems to me that what you are complaining about is a refusal by Judge McCarthy to strike out the claim on certain grounds of complaint, including that somebody lied on oath in his court, and also that there was a failure to comply with a disclosure order"...."

"Judicial review is not really concerned with matters of evidence before the District Court"

The record shows that that was by no means what the Applicant put before the High Court, she did not refer to any evidence before the District Court, and when she tried to disabuse the High Court of its misreading she was not allowed to do so as will be clear from the transcript 20/2/2017 to which she will refer when produced, which, incidentally, she was given by the State after she had completed her application to the Court of Appeal which put it outside her power to direct the attention of the Court of Appeal to the fundamental error in the judgement of the High Court

## 6. GROUNDS OF APPEAL

WHICH WILL BE RELIED ON IF LEAVE TO APPEAL IS GRANTED

1/ The grounds of Appeal  
are:-

- i) Unreasonableness
- ii). Unfair Procedure

### 2. UNREASONABLENESS.

i)

The Court of Appeal was wrong in law in failing to give due weight to the fact that this was a case of "missing evidence" that, despite the fact that the District Court had made an Order of Disclosure, no Corpus Delicti had been exhibited. In this regard, the Court of Appeal failed to give due weight to the fact that the impugned decision of the District Court flew in the face of common sense.

In the State (Keegan) v Stardust Compensation Tribunal (1986) IR 642 Henchy J noted that there was "A necessarily implied Constitutional Limitation of jurisdiction in all decisions which rights or duties(which) requires, inter alia, that the decision maker must not flagrantly reject or disregard fundamental reason or common sense in reaching his decision".

On that basis, he set out the test as follows "I would myself consider that the test of unreasonableness or irrationality in judicial review lies in considering whether the impugned decision plainly and unambiguously flies in the face of fundamental reason and common sense. If it does the decision maker should be held to have acted ultra vires"

The Court of appeal erred in law in failing to give due weight to the fact that the test is met in the instant case.

### ii). UNFAIR PROCEDURE:

The Court of Appeal erred in law in failing to give due weight to her entitlement under Article 40.3 of the Constitution as well as under the Irish European Convention on Human Rights Act, above mentioned, to be informed of the matter and be given an opportunity to comment on the material which entitlement was extinguished by the Order of the District Court.

3. The Appellant relies on Article 40.3 of the Constitution.



**6. Ground(s) of appeal which will be relied on if leave to appeal is granted**

Please list (as 1, 2, 3, etc) concisely:

1. the specific ground(s) of appeal and the error(s) of law related to each numbered ground
2. the legal principles related to each numbered ground and confirmation as to how that/those legal principle(s) apply to the facts or to the relevant inference(s) drawn therefrom
3. The specific provisions of the Constitution, Act(s) of the Oireachtas, Statutory Instrument(s) and any other legal instruments on which you rely
4. The issue(s) of law before the Court appealed from to the extent that they are relevant to the issue(s) on appeal

Name of solicitor or (if counsel retained) counsel or applicant/appellant in person:

LUCY FARR

**7. Other relevant information**

Neutral citation of the judgment appealed against e.g. Court of Appeal [2015] IECA 1 or High Court [2009] IEHC 608

COURT OF APPEAL (2017) IECA 124

References to Law Report in which any relevant judgment is reported

THE STATE (KEEGAN) V STARDUST COMPENSATION TRIBUNAL (1986) I.R. 642  
O'KEEFE V AN BORD PLEANALA (1993) I.R. 392

**8. Order(s) sought**

Set out the precise form of order(s) that will be sought from the Supreme Court if leave is granted and the appeal is successful:

ORDER GRANTING LEAVE TO SEEK BY WAY OF JUDICIAL REVIEW FOR THE RELIEFS SET FORTH IN THE NOTICE OF APPEAL ISSUED ON THE 26<sup>th</sup> DAY OF MARCH 2017

What order are you seeking if successful?

Order being appealed: set aside  vary/substitute

Original order: set aside  restore  vary/substitute

If a declaration of unconstitutionality is being sought please identify the specific provision(s) of the Act of the Oireachtas which it is claimed is/are repugnant to the Constitution

If a declaration of incompatibility with the European Convention on Human Rights is being sought please identify the specific statutory provision(s) or rule(s) of law which it is claimed is/are incompatible with the Convention

**Are you asking the Supreme Court to:**

depart from (or distinguish) one of its own decisions?

Yes

No

If Yes, please give details below:

make a reference to the Court of Justice of the European Union?

Yes

No

If Yes, please give details below:

Will you request a priority hearing?

Yes

No

If Yes, please give reasons below: District Court case involving Liberty of the Appellant is pending until 15<sup>th</sup> September 2014. A request for expedition will be made to the Registrar in due course.

Signed: Luca Cahh.

(Solicitor for) the applicant/appellant

**Please submit your completed form to:**

The Office of the Registrar of the Supreme Court  
The Four Courts  
Inns Quay  
Dublin

**together with a certified copy of the Order and the Judgment in respect of which it is sought to appeal.**

**This notice is to be served within seven days after it has been lodged on all parties directly affected by the application for leave to appeal or appeal.**