

51/2015

Order 58, rule 15



14966774
16326



SUPREME COURT

Application for Leave and Notice of Appeal

For Office use

| | |
|--|--|
| Supreme Court record number of this appeal | |
| Subject matter for indexing | |

Leave is sought to appeal from
 The Court of Appeal The High Court

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

| | | | |
|--|---|---------------------------|---------|
| Mayo County Council | V | Peter McNicholas | |
| High Court Record Nr | 2014/2643P | Court of Appeal Record Nr | 2015/65 |
| Date of filing | 27 August 2015 | | |
| Name(s) of Applicant(s)/Appellant(s) | Peter McNicholas | | |
| Solicitors for Applicant(s)/Appellant(s) | Lay litigant, assisted by McKenzie Friend, Alan Lynskey | | |
| Name of Respondent(s) | Mayo County Council | | |
| Respondent's solicitors | King & McEllin | | |
| 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? Yes No

If Yes, please explain why

1. Decision that it is sought to appeal

| | |
|-------------------------|--|
| Name(s) of Judge(s) | President Ryan, Judge Hogan and Judge Finlay-Geoghegan |
| Date of order/ Judgment | 29 July 2015 |

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 | Peter McNicholas |
|-----------------------|------------------|

Original status

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

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



| | | | |
|------------------|--|-----------------------|--|
| Solicitor | | | |
| 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) |

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

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

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

| | |
|------------------------|--|
| Current postal address | Culmore, Swinford, Co Mayo |
| e-mail address | petermcnicholas63@eircom.net |
| Telephone no. | 087 2563864 |

| | | | |
|--|---|--|--|
| How would you prefer us to communicate with you? | | | |
| <input type="checkbox"/> Document Exchange | <input checked="" type="checkbox"/> E-mail | | |
| <input 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 | Mayo County Council |
|------------------------|---------------------|

Original status

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

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

| | | | |
|--------------|--|-----------------------|-------------|
| Solicitor | | | |
| Name of firm | King & McEllin | | |
| Email | info@kingandmcellin.com | | |
| Address | The Mall, Castlebar, Co Mayo | Telephone no. | 094 9022759 |
| | | Document Exchange no. | |
| | | Ref. | |
| Postcode | | | |

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) |

| | | | |
|---------|---|-----------------------|--|
| Counsel | | | |
| Name | Pat Butler SC | | |
| Email | | | |
| Address | Church Street Building 158/159 Church Street Dublin 7 | Telephone no. | |
| | | Document Exchange no. | |
| | | Postcode | |

| | | | |
|---------|--|-----------------------|--|
| Counsel | | | |
| Name | Cormac McNamara BL | | |
| Email | | | |
| Address | The Law Library Four Courts Dublin 7 | 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. | |

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) |

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

Please set out below:

Whether it is sought to appeal from (a) the entire decision or (b) a part or parts of the decision and if (b) the specific part or parts of the decision concerned

(a) A concise statement of the facts found by the trial court (in chronological sequence) relevant to the issue(s) identified in Section 5 below and on which you rely (include where relevant if certain facts are contested)

(b) In the case where it is sought to appeal in criminal proceedings please provide a concise statement of the facts that are not in dispute

The relevant orders and findings made in the High Court and/or in the Court of Appeal

The Appellant seeks to appeal the entire decision of the Court of Appeal.

A. Findings of the Court of Appeal.

1. The Court of Appeal established the existence of a fair case to be tried - namely, whether the demolition of a section of block wall, which formed part of a public road, was unlawful – and continued the interlocutory injunction granted to the Plaintiff by the High Court.

In so doing, the Court of Appeal failed to recognise that:

- (a) the Plaintiff may repair any damage or interference with the Public Road (ie. rebuild the block wall) immediately and recover the costs of carrying out these works as a simple contract debt under s.13(10) of the Roads Act 1993; and
- (b) the law provides that the Plaintiff may issue summary proceedings against the Defendant in relation to the alleged offence either under Section 13(10) of the Roads Act 1993 or under Section 151 of the Planning and Development Act 2000; and
- (c) a person guilty of an offence under Section 13(10) or Section 73(10) of the Roads Act 1993 shall be liable on summary conviction to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding six months or to both such fine and imprisonment; and

accordingly, the Court of Appeal erred in Law in continuing the interlocutory injunction granted by the High Court to the Plaintiff, in circumstances where the proceedings taken by the Plaintiff can, pursuant to Article 30.3^o of the Constitution only be taken at the suit of the Attorney General.

5. Reasons why the Supreme Court should grant leave to appeal

In the case of an application for leave to appeal to which Article 34.5.3° of the Constitution applies (i.e. where it is sought to appeal from the Court of Appeal)—

Please list (as 1, 2, 3, etc) concisely the reasons in law why the decision sought to be appealed involves a matter of general public importance and / or why in the interests of justice it is necessary that there be an appeal to the Supreme Court

In the case of an application for leave to appeal to which Article 34.5.4° of the Constitution applies (i.e. where it is sought to appeal to the Supreme Court from the High Court)—

Please list (as 1, 2, 3, etc) concisely the reasons in law:

- i. why the decision sought to be appealed involves a matter of general public importance and / or why in the interests of justice it is necessary that there be an appeal to the Supreme Court and

ii. why there are exceptional circumstances warranting a direct appeal to the Supreme Court

Appeal under Article 34.5.3° of the Constitution

1. The Law pursuant to the Roads Act 1993 states that the Plaintiff may repair the damaged block wall immediately and recover the costs incurred repairing the wall, from the Defendant.

The Law also provides that the Plaintiff may issue summary proceedings against the Defendant under either the Roads Act 1993 or the Planning and Development Act 2000.

The proceedings instituted by the Plaintiff can only be taken at the suit of the Attorney General in accordance with Article 30.3° of the Constitution and accordingly, the decision of the Court of the Appeal to continue the Interlocutory Injunction granted by the High Court is repugnant to the Constitution, in particular Article 30.3°.

In the circumstances, it is in the interests of justice and a matter of general public importance that the Supreme Court determines this issue.

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

The Court of Appeal failed to recognise that:

- (a) the Plaintiff may repair any damage or interference with the Public Road (ie. rebuild the block wall) immediately and recover the costs of carrying out these works as a simple contract debt under Section 13(10) of the Roads Act 1993; and
- (b) the law provides that the Plaintiff may issue summary proceedings against the Defendant in relation to the alleged offence either under Section 13(10) of the Roads Act 1993 or under Section 151 of the Planning and Development Act 2000; and
- (c) a person guilty of an offence under Section 13(10) or Section 73 (10) of the Roads Act 1993 shall be liable on summary conviction to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding six months or to both such fine and imprisonment; and

accordingly, the Court of Appeal erred in Law in continuing the interlocutory injunction granted by the High Court to the Plaintiff, in circumstances where the proceedings taken by the Plaintiff can, pursuant to Article 30.3^o of the Constitution, only be taken at the suit of the Attorney General.

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 there from.

The Appellant contends that pursuant to Article 30.3 of the Constitution, the proceedings taken by the Plaintiff can only be taken at the suit of the Attorney General. The Roads Act 1993 states that the Plaintiff may issue summary proceedings only, where a person damages or interferes with a public road. The Roads Act 1993 also states that the Plaintiff may under Section 13(10) rebuild the block wall immediately and recover the costs of carrying out these works as a simple contract debt. Notwithstanding that these proceedings should be taken at the suit of the Attorney General, the decision of the Plaintiff to seek High Court interlocutory relief

against the Defendant for a summary offence has no basis in law and is not proportionate to the offence.

3. The specific provisions of the Constitution, Act(s) of the Oireachtas, Statutory Instrument(s) and any other legal instruments on which you rely

Article 30.3° of the Constitution
Article 38.1° of the Constitution
The Roads Act 1993
The Planning and Development Act 2000

4. The issue(s) of law before the Court appealed from to the extent that they are relevant to the issue(s) on appeal

Whether it was open to the Plaintiff to seek a Declaration in the High Court that the Defendant had unlawfully interfered with a Public Road in breach of the Roads Act or the Planning and Development Act.

Name of applicant/appellant in person:

Peter McNicholas

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

[2015] IECA 184

References to Law Report in which any relevant judgment is reported

Attorney General v Lee [2000] IESC 80 [2000] 4 IR 68

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:

The Appellant seeks an Order vacating the judgments of the learned High Court Judge of the 29th January 2015, the judgment of the learned Court of Appeal Judges of the 29th July 2015 and dismissing the Plaintiff/Respondent's claims. The Appellant further seeks that the Costs Order of the High Court and the Court of Appeal be vacated and that the Appellant be awarded the costs of the High Court and Court of Appeal together with the costs of the within appeal.

What order are you seeking if successful?

Order being set vary/substitute
appealed: aside

Original set restore vary/substitute

order:

aside

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:

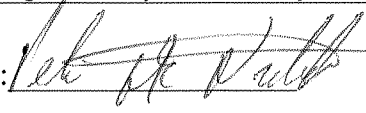
make a reference to the Court of Justice of the European Union? Yes No

If Yes, please give details below:

Will you request a priority hearing? Yes No

If Yes, please give reasons below:

A priority hearing is requested in circumstances where the appeal is likely to entail a short hearing and the appellant is in his mid 60s and suffering from multiple sclerosis. The Injunction granted breaches the Appellant's right to due process under Article 38.1 of the Constitution in respect of the alleged breaches of the Roads Act and/or Planning Act and is also in breach of Article 30.3 of the Constitution. Furthermore, a public right of way is currently blocked up as a result of the injunction

Signed: 
(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.