

SUPREME COURT
Respondent's Notice



Supreme Court record number	S:AP:IE:2017:000116
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[Title and record number as per the High Court proceedings]

MORUFU ADEMOLA ANIMASHAUN	V	GOVERNOR OF MOUNTJOY PRISON
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Date of filing	2nd August 2017
Name of respondent	Governor of Mountjoy Prison
Respondent's solicitors	Chief State Solicitor's Office
Name of appellant	Morufu Ademola Animashaun
Appellant's solicitors	Cyril & Company Solicitors

1. Respondent Details

Where there are two or more respondents by or on whose behalf this notice is being filed please also provide relevant details for those respondent(s)

Respondent's full name	Governor of Mountjoy Prison
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The respondent was served with the application for leave to appeal and notice of appeal on date	
29/07/2017	

The respondent intends :	
<input type="checkbox"/>	to oppose the application for an extension of time to apply for leave to appeal
<input type="checkbox"/>	not to oppose the application for an extension of time to apply for leave to appeal
<input checked="" type="checkbox"/>	to oppose the application for leave to appeal
<input type="checkbox"/>	not to oppose the application for leave to appeal
<input type="checkbox"/>	to ask the Supreme Court to dismiss the appeal
<input type="checkbox"/>	to ask the Supreme Court to affirm the decision of the Court of Appeal or the High Court on grounds other than those set out in the decision of the Court of Appeal or the High Court
<input type="checkbox"/>	Other (please specify)

If the details of the respondent's representation are correct and complete on the notice of appeal, tick the following box and leave the remainder of this section blank; otherwise

complete the remainder of this section if the details are not included in, or are different from those included in, the notice of appeal.

Details of respondent's representation are correct and complete on notice of appeal:

Respondent's Representation

Solicitor			
Name of firm	Chief State Solicitor's Office		
Email	BARRY_RYAN@csso.gov.ie		
Address	Osmond House, Little Ship Street,	Telephone no.	014176100
		Document Exchange no.	186
Postcode	Dublin 2	Ref.	2016/05969
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)

Counsel			
Name	Remy Farrell SC		
Email	rfarrell@lawlibrary.ie		
Address	Law Library, Four Courts	Telephone no.	018175222
		Document Exchange no.	301059
Postcode	Dublin 7		

Counsel			
Name	Ronan Kennedy		
Email	ronanckennedy@lawlibrary.ie		
Address	Law Library, Four Courts	Telephone no.	01-817 5342
		Document Exchange no.	816114
Postcode	Dublin 7		

If the Respondent is not legally represented please complete the following

Current postal address
Telephone no.
e-mail address

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)

2. Respondent's reasons for opposing extension of time

If applicable, set out concisely here the respondent's reasons why an extension of time to the applicant/appellant to apply for leave to appeal to the Supreme Court should be refused

Not applicable

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

Set out concisely whether the respondent disputes anything set out in the information provided by the applicant/appellant about the decision that it is sought to appeal (Section 4 of the notice of appeal) and specify the matters in dispute:

Not applicable

4. Respondent's reasons for opposing leave to appeal

If leave to appeal is being contested, set out concisely here the respondent's reasons why:

It is proposed to deal with the issues raised by the Applicant in the same sequence as set out in the Notice of Application. However, before doing so it is appropriate to observe that the applicant has sought to do no more than simply recite grounds of appeal that contest the correctness of the judgment of the Court of Appeal. No attempt has been made by the applicant to argue or contend that the issues raised are points of law of general public importance or that it is in the interests of justice that an appeal be certified.

As such the application ought to be dismissed *in limine*. Notwithstanding the failure of the applicant to address such issues and without prejudice to same the respondent proposes to deal with the criteria set out in Article 34.5.3° of the Constitution.

Requirement that committal warrant recite consideration of community service

The applicant is quite correct to assert that a committal warrant that does not recite whether or not a District or Circuit Judge considered community service will, in theory at least, leave both the applicant and the respondent in the dark as to whether such a consideration was entered upon. However, that is not the issue that arises here. The issue is whether either a prisoner or a gaoler require that such information be patent on the face of a committal warrant in order for it to be valid.

Although the applicant cites *Ejerenwa v Governor of Cloverhill Prison* [2011] IESC 41 in support of his position there is no attempt to even identify the ratio of that decision. *Ejerenwa* is authority for the proposition that a committal warrant should contain clear information on its face as to the basis for its jurisdiction. While *Ejerenwa* described in a general way the characteristics of a valid warrant or detention document, it never purported to specify which particular matters formed the basis of jurisdiction, other than for the 'detention order' in issue in that instance (which described itself as being made pursuant to 's5(2) of the Immigration Act 2003', which as a reference only pointed towards the provision which actually underpinned the jurisdiction).

The applicant makes no attempt to identify how it is that the consideration (or not) of community service is a matter that goes to jurisdiction in the sense contemplated by *Ejerenwa*. On the contrary the provisions of Section 3 of the Criminal Justice (Community Service) (Amendment) Act, 2011 simply impose certain obligations on District Judges as part of the sentencing process. They do not purport to expand or diminish the jurisdiction of the District Court. They simply regulate the manner in which a discrete aspect of the sentencing process is dealt with.

If the applicant is correct and a committal warrant is obliged to recite the consideration of community service then presumably the same argument might be made in relation to any number of other *obligations* that arise as part of the sentencing process. For example there would have to be a recitation of the consideration (and possibly granting or withholding) of legal aid, the fact that the District Judge gave credit for a plea of guilty, consideration of proportionality, taking account of the previous good character of the accused, etc.

The applicant makes no attempt to engage with the fact that the instant case (and indeed cases such as *Ejerenwa*) occur in the context of an Article 40 application. Whilst a failure on the part of a sentencing judge to make reference to matters such as community service or the other sentencing imperatives referred to above might well be grounds for appeal they do not represent grounds for release under Article 40. The courts have repeatedly emphasized relief under Article 40 is only available where a fundamental defect is identified: *The State (Royal) v. Kelly* [1974] IR 259; *State (McDonagh) v. Frawley* [1978] IR 131; *McDonald & O'Rafferty v.*

Governor of Portlaoise Prison [2016] IESC 37; Ejerenwa v. Governor of Cloverhill Prison [2011 IESC 41]; *FX v. Clinical Director of the Central Mental Hospital* [2014] IESC 1;

The observations of Denham CJ in *Ryan v. Governor of Midlands Prison* [2014] IESC 54 are particularly apposite:

"The general principle of law was that if an Order of a Court does not show an invalidity on its face, in particular if it is in an Order in relation to post-conviction detention, then the rules of the constitutional and immediate remedy of Habeas Corpus are not appropriate. An appropriate remedy may be an appeal, or an application to seek leave for judicial review. In such circumstances, the remedy of Article 40.4.2 arises only if there has been an absence of jurisdiction, of fundamental denial of justice, or a fundamental flaw".

In the present case the applicant did invoke his right of appeal to the Circuit Court. He represented himself and was present throughout the proceedings. It was open to him to make such submissions as he saw fit both before the District Court and the Circuit Court in relation to the issue of community service. Surprisingly the applicant did not swear any affidavit in the proceedings and gave no account of whether or not the District Judge or Circuit Judge considered the question of community service either at first instance or on appeal. As such the issue raised is purely a formal one.

Again, the applicant has simply asserted that the Court of Appeal was wrong in its conclusion. No attempt is made to identify a substantial point of law or place it in the context of well understood authority. On the contrary all relevant and recent authority makes it clear that such matters do not have to be recited on the face of a committal warrant. In reality the position contended for by the applicant is one of absurd formalism whereby the function of a committal warrant is no longer to inform prisoner and gaoler of the jurisdiction and scope of the imprisonment – rather it becomes a kind of narrative of the events leading up to the imposition of the sentence.

It is far from clear as to how the applicant who was present for those events is in any sense prejudiced or disadvantaged by what he contends to be a defect on the face of the committal warrant in reciting same.

5. Respondent's reasons for opposing appeal if leave to appeal is granted

Please list (as 1, 2, 3 etc. in sequence) concisely the Respondent's grounds of opposition to the ground(s) of appeal set out in the Appellant's notice of appeal (Section 6 of the notice of appeal):

1. There is no necessity or requirement that a committal warrant emanating from the District Court (or the Circuit Court on appeal) should recite the consideration given by the relevant Judge to the imposition of a community service order as an alternative to the imposition of a custodial sentence.
2. The requirement to give such consideration does not go to the jurisdiction of the relevant judge and as such is not a matter which needs to be recited on the face of a committal warrant.

3. The Appellant was present throughout the proceedings before the District Court and the Circuit Court. As such he is at no disadvantage by reason of the fact that the committal warrant does not recite any reference to consideration by the respective judges of the issue of community service.

Name of counsel or solicitor who settled the grounds of opposition (if the respondent is legally represented), or name of respondent in person:

Ronan Kennedy
Remy Farrell SC

6. Additional grounds on which decision should be affirmed

Set out here any grounds other than those set out in the decision of the Court of Appeal or the High Court on which the Respondent claims the Supreme Court should affirm the decision of the Court of Appeal or the High Court:

Are you asking the Supreme Court to:

depart from (or distinguish) one of its own Yes No

If Yes, please give details below:

make a reference to the Court of Justice of the Yes No

If Yes, please give details below:

Will you request a priority hearing? Yes No

If Yes, please give reasons below:

Given that these are Article 40 proceedings the Respondent is anxious that the litigation in respect of same is concluded as soon as possible.

Signed: Maria Brown
Maria Brown
Chief State Solicitor
(Solicitor for) the respondent

Please submit your completed form to:

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

This notice is to be lodged and served on the appellant and each other respondent within 14 days after service of the notice of appeal.