

Application for Leave to Appeal 2020/29, Munster Wireless Ltd. v Judge Terence Finn.

Background

Proceedings were initiated against the applicant in the District Court at Cashel. The respondent initially invoked the Battle rule prohibiting the applicant from being represented by someone other than a legal professional. William Fitzgerald, a director of the applicant company, requested a preliminary ruling from the CJEU under article 267 of the TFEU on the rule's compatibility with Article 54 of the TFEU.

The respondent then allowed the company to be represented by someone other than a legal professional citing exceptional circumstances as the reason for so doing, without specifying what those exceptional circumstances were.

William Fitzgerald brought an application for leave to apply for judicial review in his own name seeking legal certainty on the legality of the Battle rule and seeking to have the respondent's decision to refuse to allow the DAR to be active overturned. The application (2014JR603), the appeal to the Court of Appeal (2014/59) and the application for leave to the Supreme Court (2015/63) were all refused.

On foot of the respondent making a finding against the applicant in the matter before the District Court, the applicant made an application for leave to apply for judicial review from which Mr. Justice Humphries referred as a preliminary matter to be decided, whether the company should be represented by someone other than a legal professional.

In that matter (2016/JR/543) Ms. Justice Faherty found against the applicant who then made a "leap frog" application to the Supreme Court (139/2018) which was refused. As the applicant had not filed an appeal with the Court of Appeal when seeking the "leap frog" appeal, they were out of time to do so and so made an application for an extension of time to appeal (328/2019) which was also refused, leaving the applicant without an appeal of the High Court decision on the substantive issues of the matter.

Objection to the late filing of the respondent's notice.

The applicant became aware, from the Supreme Court office, on Thursday the 2nd of July that the respondent's notice had been filed on the 29th of May. The applicant wrote by email to the Chief State Solicitor's Office on the 2nd of July requesting a copy of the respondent's notice which was received by email on the 4th of July.

It should be noted that the applicant objects to an extension of time to lodge the respondent's notice as the respondent did not reply to an email request on the 28th of April from the applicant to state the grounds of opposition and on eventually having sight of the grounds of opposition it is clear that they are designed to mislead and obfuscate the matter.

In assessing the validity of the respondent's objections the following questions should be considered;

1. Where, when and by whom was the appeal of the High Court decision heard?

2. Is it a matter of general public importance where the lawfulness of a rule which is applied generally is challenged?
3. Does section 38 of the Companies Act 2014 alter the legal status of a company and if so how?
4. What is the meaning of the phrase “or do any other matter” in section 41 of the Companies Act 2014?
5. What is the meaning of the phrase “by virtue only” in subsection 6 of section 868 of the Companies Act 2014?
6. How do the court rules of the CJEU and ECHR affect the rules of national courts?