

2014/603 JR

**THE HIGH COURT
JUDICIAL REVIEW**



BETWEEN

WILLIAM FITZGERALD

APPLICANT

AND

JUDGE TERENCE FINN

RESPONDENT

AFFIDAVIT OF WILLIAM FITZGERALD

I William Fitzgerald, of Drumroe, Ballyporeen, Co. Tipperary aged 18 years and upwards, a company director.

1. I am the applicant in the judicial review proceedings herein and I make this Affidavit in support of my application for leave to apply for Judicial Review.

2. I make this Affidavit from facts in my own knowledge save where otherwise appears and where so appears, I believe those facts to be true.

3. The application relates to proceedings at Cashel District Court between South Tipperary County Council and Munster Wireless Ltd., of which I am a director.

4. On answering a summons to Cashel District Court on behalf of Munster Wireless Ltd., Patrick Fitzgerald, a director, was informed by the respondent that he would have to retain a solicitor.

5. On the 2nd of May 2014 Pat Fitzgerald, a director of Munster Wireless Ltd. Wrote to the respondent identifying an apparent contradiction between Irish case law i.e. *Battle v Irish Art Promotions IR/252* and *The Matter of Applications for Orders in Relation to Costs in Intended Proceedings by Coffey and others IESC 11/2013* and Article 54 (ex Article 48 TEC) of the TFEU which states that establishing companies "*be treated in the same way as natural persons who are nationals of Member States.*"

6. He requested a preliminary ruling under Article 267 TFEU (ex Article 234), the question being "Under what conditions and at what stage of proceedings is it a requirement for companies to be represented by a legal professional?"

7. On the 22nd of May at Cashel District Court I raised the issue of a companies right to be treated as a natural person with the respondent. I informed him that Pat Fitzgerald had written to him requesting a preliminary ruling from the ECJ on the matter and asked if he

had received the letter. He responded that he had not even though the letter was hand delivered to the court office. I gave him a copy of the letter. He requested a company resolution from Munster Wireless Ltd. Allowing me to represent the company.

8. The matter was adjourned to the 12th of June 2014 and subsequently adjourned by the court office to 24th of July 2014 where Judge Aenus McCarthy adjourned to the 11th of September as we were still awaiting information on the request for a preliminary ruling.

9. At Cashel District Court on the 11th of Sept 2014 the respondent said that he was prepared to comply with Article 54 of the TFEU and would allow me to represent the company. I informed him that it would be exceeding the court's jurisdiction as it would be overruling the Irish Supreme Court ruling in Coffey and others (IESC 11/2013) I submitted a copy of the ruling and a copy of the ruling in Arma v France where the ECHR found a breach of Article 6 § 1 of the convention where a company director and shareholder was not allowed to represent the company.

10. I had repeatedly requested that the DAR be implemented from the court office and from the respondent himself. While the court office responded, I had as yet to get a response from the respondent. I again requested DAR and was directly refused.

11. On the 22nd of Sept 2014 I made an application for leave to apply for Judicial Review of the respondents refusal to allow the DAR or any other digital recording to be active. The application was adjudicated on by Justice Anthony Barr who claimed to be certain that while there may have been technical reasons for the DAR not being active the respondent did not refuse to allow the DAR system and so refused my application.

12. On the 25th of Sept 2014 at Cashel District Court the respondent claimed that, as the ECHR ruling preceded the IESC one, the IESC one was current and as it allowed for a director to represent a company in exceptional cases this provided an out, and so he was refusing my request for a preliminary ruling.

13. As Community law takes precedence over national law it appears that the judge has erred in law.

14. The ruling in Arma v France indicates that the final part of paragraph 39 of the judgment in IESC 11/2013 is factually incorrect.

15. I again requested DAR to be available. The respondent said that he had made his ruling, that he would not allow electronic recording as he saw no need for it and that if I didn't like it I could take it elsewhere. I informed him that I had taken it to the High Court and relayed Justice Barr's insistence that DAR would not have been refused. He insisted that he saw no need for it and that I could employ a stenographer.

16. There is a duty on national authorities to observe and safeguard the provisions of the TFEU and as any conflicting provision of national law therefore ceases to be applicable.

17. The denial of an accurate record is effectively a spoliation of evidence in any future related proceedings.

18. The Respondent is acting as judge in his own cause in refusing to allow DAR.

Sworn by the said William Fitzgerald This 14th day of October 2014 at Dublin before me
a practising solicitor. *the deponent has been identified to me by*
Irish drivers licence number 230063089

RT Fitzgerald

Michael Mann a practising solicitor.

KOD/Lyons

SOLICITORS

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