



THE COURT OF APPEAL

Record Number: 2023/305
High Court Record Number: 2022/535 JR
Neutral Citation Number [2024] IECA 136

Birmingham P.

Costello J.

Noonan J.

BETWEEN/

AMMI BURKE

APPELLANT

-AND-

**AN ADJUDICATION OFFICER AND THE WORKPLACE RELATIONS
COMMISSION**

RESPONDENTS

-AND-

ARTHUR COX LLP

NOTICE PARTY

COSTS RULING of the Court delivered on the 4th day of June, 2024

1. In the principal judgment herein ([2024] IECA 105), the Court dismissed the appellant's appeal. At para. 61 of the judgment, the Court indicated a provisional view that

as the second respondent and notice party had been entirely successful in relation to the appeal, they should be entitled to their costs. The appellant was afforded the opportunity to contend for an alternative order by making a written submission. Such a submission has now been made by the appellant and responded to by the other parties.

2. In brief summary, the appellant's written submissions comprise exclusively complaints about the manner in which the hearing was conducted and criticisms of the judgment of the Court. The appellant submits that these constitute substantial reasons which dictate that the Court should depart from the general principle in relation to the allocation of costs.

3. This argument is misconceived on a fundamental level. An unsuccessful appellant cannot avoid a costs order by impermissibly complaining that the judgment was wrong. This is to ignore the provisions of s. 169 of the Legal Services Regulation Act, 2015 and the well-settled jurisprudence on costs. S. 169(1), insofar as relevant to this appeal, provides:

“A party who is entirely successful in civil proceedings is entitled to an award of costs against a party who is not successful in those proceedings, unless the court orders otherwise, having regard to the particular nature and circumstances of the case, and the conduct of the proceedings by the parties, including -

(a) conduct before and during the proceedings,

(b) whether it was reasonable for a party to raise, pursue or contest one or more issues in the proceedings,

(c) the manner in which the parties conducted all or any part of their cases, ...”

4. A successful party to litigation thus has a *prima facie* right to its costs under the section in the absence of any of the factors identified therein which might move the court to order otherwise in the exercise of its undoubted discretion in relation to costs. The appellant has identified no relevant factor that could have a bearing on the other parties' entitlement to their costs, they having been entirely successful in this appeal.

5. In addition to the normal, or party and party, costs, the notice party separately seeks an order for costs on a legal practitioner and client basis pursuant to the provisions of O. 99, r. 10(3) of the Rules of the Superior Courts. As is apparent from the principal judgment herein, the High Court made such an order which was upheld by this Court for the reasons stated. As identified in the judgment of the High Court in *Trafalgar Developments Limited* [2020] IEHC 13, relied upon by the notice party, this Court has a discretion to depart from the normal rule concerning party and party costs where it wishes to mark its disapproval of the conduct of the party against whom such order is sought.

6. However, in the present case, the Court's disapproval of the appellant's conduct is clearly evident from the terms of the principal judgment itself and in the circumstances, the Court considers that it is unnecessary to additionally order costs against the appellant on a legal practitioner and client basis, particularly having regard to the fact that such an order has already been made in respect of the costs of the High Court which are likely to be significantly more substantial.

7. Accordingly, the Court directs that the second respondent and notice party be entitled to their costs of the appeal on the normal party and party basis, same to be adjudicated in default of agreement.