

**THE HIGH COURT**

**[2023] IEHC 337**

**Record No: 2022/432 SS**

**IN THE MATTER OF SECTION 2 OF THE SUMMARY JURISDICTION ACT  
1857, AS EXTENDED BY SECTION 51 OF THE COURTS SUPPLEMENTAL  
PROVISIONS ACT 1961**

**BETWEEN**

**PHILIP CASSERLY**

**APPELLANT**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS (AT THE SUIT OF GARDA  
ALAN DOHERTY)**

**RESPONDENT**

**Costs ruling of Mr. Justice Mark Heslin delivered on the 23rd day of May 2023**

- 1.** This short ruling on the question of costs must be read in conjunction with the judgment delivered on the 31<sup>st</sup> of March 2023 ("the judgment").
- 2.** I have carefully considered the written submissions furnished by both sides (namely the appellant's submissions dated the 23<sup>rd</sup> April 2023 and the respondent's dated 14<sup>th</sup> May 2023) and I am very grateful to Counsel for both sides, in that regard.
- 3.** The respondent submits that the "normal rule" (to the effect that "costs" should "follow the event") should prevail, whereas the appellant submits that it would be an appropriate exercise of this Court's discretion to make no order as to costs.
- 4.** For the reasons detailed in the judgment, the answer to the question which was posed in the appellant's appeal by way of case stated was in the affirmative. This Court was satisfied that the learned District Judge was correct in law to convict the appellant of the offence in question. However, for this court to reach this conclusion was by no means a straightforward exercise in light of the need to interpret the legislation in question in the context of fair procedures requirements and the principles derived from a range of authorities.

**5.** It seems to me that the following factors are particularly relevant in the context of a decision on the question of costs.

**6.** The appellant was entitled to state a case on a point of law.

**7.** The learned District Judge who signed the case stated and transmitted the matter to this Court was plainly of the view that a point of law arose for determination within the meaning of s. 2 of the Summary Jurisdiction Act 1857.

**8.** The learned District Judge was not of the opinion that the application was "*frivolous*" (See s. 4 of the 1857 Act and O. 102, r. 15 of the District Court Rules).

**9.** Whilst s. 169 of the Legal Services Regulation Act 2015, creates a presumptive right to costs on the part of an entirely successful party to proceedings, it seems to me that it was entirely reasonable for the appellant to pursue the question at issue in this point of law appeal (See s. 169 (1) (b) of the 2015 Act).

**10.** This Court's judgment concerns the proper interpretation and practical operation of s. 12 (3) (a) and (4) of the Road Traffic Act 2010 as amended by s. 9 of the Road Traffic (No. 2) Act 2011.

**11.** Although it is true that the applicant's interest was a personal one, in that he sought to avoid conviction, the clarification set out in the judgment would seem to me to be of much wider application.

**12.** The bringing of this appeal by way of case stated has resulted in a benefit to the public, or a significant portion of same, irrespective of the particular result for the appellant.

**13.** The issue at the heart of the appeal concerned the fundamentally important question of a criminal conviction and the circumstances in which such a conviction was or was not lawful.

**14.** The appeal presented a question of law which was not straightforward and upon which there were two legitimate views (e.g., whether, or not, the revival of an obligation on an arrested person to permit a blood sample to be taken gives rise to a further duty on the relevant Garda member to repeat warnings previously provided before the arrested person's obligations went into abeyance?).

**15.** The relevant legislation is silent on the duty to give any warning to an arrested person regarding their legal obligations (i.e. the obligation to warn arises as an element of fair procedures and constitutional justice requirements) and this speaks to both the complexity of the question and the wider significance of the clarification set out in the judgment.

**16.** The answer to the question posed in the point of law appeal was not at all immediately obvious.

**17.** No authority was opened to the court which determined the outcome and the question at issue can fairly be considered to be a novel one.

**18.** Although the respondent has been entirely successful, I am satisfied that the issue which was the subject of the case stated concerned a matter of far wider public importance

**19.** It seem to me that, in the particular circumstances of this case the Court enjoys the discretion to depart from the normal rule.

**20.** This decision seems to me to accord with the principles outlined by the Divisional Court in *Collins v. Minister for Finance* [2014] IEHC 79 (See also *Kenny Lee v. The Revenue Commissioners* [2021] IECA 114) and, guided by same, I am satisfied that the justice of the situation is best met by making no order as to costs.