



**AN CHÚIRT UACHTARACH**

**THE SUPREME COURT**

S:AP:IE:2022:000144

**O'Donnell C.J.**

**Dunne J.**

**Hogan J.**

**Murray J.**

**Collins J.**

**Between/**

**MARY MUNNELLY**

**Plaintiff/Respondent**

**-and-**

**MARGARET HASSETT, TIMOTHY CREMIN AND CITY LEARNING**

**LIMITED**

**Respondents/Appellants**

**Ruling on Costs delivered electronically on the 31<sup>st</sup> July, 2024**

1. This unusual case raises a difficult issue in respect of costs.

2. By a judgment delivered on 29 November 2023, this Court allowed the respondents' (the appellants in these proceedings) appeal in its entirety, and dismissed the plaintiff's claim as to costs. Section 169 of the Legal Services Regulation Act, 2015 ("the 2015 Act") provides that a party who is entirely successful in civil proceedings is entitled to their costs against the unsuccessful party, unless the Court considers that circumstances exist that justify departure from that rule. This can be said to express in statutory form what had been the standard practice of the courts and is a helpful structure for analysis.
3. The respondents seek their costs, contending that they come within the general rule established by section 169 that a wholly successful party is entitled to costs. The issue becomes, therefore, if there are circumstances justifying a departure from that rule.
4. The background to this appeal concerned a dispute that followed from Ms Munnelly's, the plaintiff herein, departure from the third named respondent company. The plaintiff represented herself. The respondents sought to argue that the claim was barred by the rule in *Henderson v. Henderson* (1843) 3 Hare 100, 67 E.R. 313 ("*Henderson v. Henderson*") because of proceedings which she had commenced against the company itself, and which had been dismissed by the Circuit Court on 28 November, 2018. In 2019, the Circuit Court agreed, and struck out the proceedings commenced by the plaintiff. However, the High Court on appeal, ([2022] IEHC 632, Unreported, High Court, Barr J., 17 November, 2022) reversed the decision of the Circuit Court and held that the action might proceed on all issues raised, other than the defamation claim, on the basis that while some or all of these matters had been raised in the earlier

proceedings, they had not been determined by the Circuit Court. The High Court also awarded the plaintiff her costs of the Circuit Court appeal, although in circumstances where she was unrepresented, such costs would be unlikely to be significant.

5. Under section 39 of the Courts of Justice Act, 1936 (“the 1936 Act”), a decision of the High Court on appeal shall be final and conclusive and not appealable. However, pursuant to Article 34.5.4<sup>o</sup>, the Supreme Court shall have jurisdiction to entertain an appeal from a decision of the High Court if it involves a matter of general public importance, or the interests of justice require that such an appeal should be heard, and there are exceptional circumstances warranting a direct appeal. It has previously been held (*Pepper Finance Corporation v. Cannon* [2020] IESC 2, [2020] I.L.R.M. 373) that if it can be established that the decision involves a point of law of general public importance such as to satisfy the criteria set out in Article 34.5.4<sup>o</sup> of the Constitution, and such point of law would not be dealt with unless leave is granted, then the existence of the limitation on appeal created by section 39 is itself a special circumstance under Article 34.5.4<sup>o</sup>. By a determination of this Court ([2023] IESCDET 45) the respondents were granted leave to appeal to the Supreme Court, on the issue of the true interpretation of the rule in *Henderson v. Henderson*, and in particular, whether it applied to the order made by the Court or the manner in which the decision was expressed, and whether the rule could be invoked by parties who are not parties to the decision.
6. In a decision delivered on 29 November, 2023, [2023] IESC 29 (Unreported, Supreme Court, O’Donnell C.J., Dunne, Hogan, Murray and Collins JJ., 29

November 2023), this Court allowed the respondents' appeal, holding that the rule in *Henderson v. Henderson* was applicable, and could be invoked in this case by parties who had not been parties to the earlier proceedings.

7. There are several factors which must be taken into account in this case, in addition to the outcome of the appeal to which the Court must have regard pursuant to section 169 of the 2015 Act. First, the appeal comes to this Court because it involved an issue of general public importance which extended beyond the facts of this case. If such an issue had not arisen the parties would have been bound by the terms of section 39 of the 1936 Act, and the plaintiff would have been entitled to pursue her proceedings and to recover the costs of this appeal pursuant to the order of the High Court. It is, therefore, somewhat harsh on the plaintiff that she finds herself brought to the Supreme Court, at risk of costs, because the issue upon which she succeeded in the High Court was one which raised an issue of law of general public importance. It is clear that the issue was not argued as extensively in the High Court as it was in this Court. Furthermore, while the plaintiff was represented by solicitor and counsel under the *ad hoc* scheme for legal representation in Supreme Court appeals, and did not, therefore, incur costs in defending the appeal, the fact is that an award of costs in respect of a full legal team will bear considerably more severely upon her, than the award of costs which she obtained in the High Court, would have borne on the respondents.
8. Finally, the background to this case is concerns a personal dispute between individuals who had been working together and who at one time, it appears, may

have been friends. An award of costs can further aggravate ill feeling. This is a legitimate consideration in the exercise of a court's discretion.

9. In this case the respondents succeeded in their appeal, and in doing so, brought these proceedings to an end. In all the circumstances of the case, the Court considers that the merits of the case will best be met by making no order as to costs in this Court, and setting aside the order for costs made in favour of the plaintiff in the High Court, and making no order in respect of the costs in that Court.