No Redaction Needed

APPROVED

THE HIGH COURT
JUDICIAL REVIEW

2016 No. 313 J.R

BETWEEN

GERARD ALPHONSUS HUMPHREYS
ROBERT PAUL DAVIS
PACNET HOLDINGS LIMITED

Write to Registrar

APPLICANTS

AND

DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

ANONAN INTERNATIONAL TRADERS LIMITED

NOTICE PARTY

JUDGMENT of Mr. Justice Garrett Simons delivered on 25 January 2019.

INTRODUCTION

1. These judicial review proceedings should have been entirely unnecessary. The need to bring the proceedings only arose as a consequence of the unwillingness of the Director of Public Prosecutions ("*DPP*") to respect the finality of a High Court judgment.

2. The background to the matter can be shortly stated. In November 2014, the High Court (O'Malley J.) made an order, on an appeal from the Circuit Court, the effect of which was to dismiss certain proceedings in their entirety. I will refer to these earlier proceedings as the "*forfeiture application*". Notwithstanding the fact that the forfeiture application had been dismissed in its entirety, the DPP maintains the position that those proceedings remain "*pending*" before the Circuit Court, and that the Circuit Court accordingly has jurisdiction to state a case to the Court of Appeal.

3. The within judicial review proceedings were instituted in response to an indication by the Circuit Court in March 2016 that it intended to accede to the DPP's application to state a case to the Court of Appeal. The applicants in the judicial review proceedings are three of the four respondents to the forfeiture application. (The fourth respondent is a notice party to these judicial review proceedings, and has indicated through counsel that it supports the application for judicial review). The judicial review proceedings seek, in effect, to restrain the taking of any further steps in respect of the forfeiture application on the basis that those proceedings have been dismissed. The DPP opposes this relief.

4. The judicial review proceedings came on for hearing before me on 15 January 2019.

5. The stance which has been adopted by the DPP is so extraordinary that I adjourned the judicial review proceedings overnight in order to allow counsel on behalf of the DPP to confirm his instructions. Counsel informed me on the following day that the DPP's position remained as before.

6. For the reasons set out below, I have concluded that the DPP's position is untenable, and fails to respect the principle of *res judicata* and the hierarchy of the courts.

THE FORFEITURE APPLICATION

7. The forfeiture application related to cash which had been seized at Shannon Airport in May 2010. The cash was in a variety of different currencies, and was equivalent in value to approximately €210,000.

8. Section 39 of the Criminal Justice Act 1994 (as amended by the Proceeds of Crime Act 2005) provides that a judge of the Circuit Court may order the forfeiture of any cash which has been seized if satisfied that the cash, directly or indirectly, represents the proceeds of crime, or is intended by any person for use in connection with any criminal

conduct. Section 38 of the Criminal Justice Act 1994 authorises the District Court to order the detention of cash seized for periods not exceeding three month intervals and for a total period not exceeding two years from the date of the (first) order for detention. The combined effect of the two sections is that an application to forfeit cash must be made within two years of the date of the (first) detention order.

9. Section 38(3A) of the Criminal Justice Act 1994 (as inserted in 2005) provides that where an application is made under section 39(1) for an order for the forfeiture of cash detained, the cash shall, notwithstanding the two-year time limit, continue to be so detained until the application is finally determined.

10. The forfeiture application was instituted by way of an originating notice of motion as required under Order 69 of the Circuit Court Rules. There were four parties named as respondents / notice parties to the forfeiture application. For ease of exposition, I will use the shorthand "*respondents*" rather than "*respondents / notice parties*" to describe these parties.

11. Three of these four respondents issued a notice of motion seeking to dismiss the forfeiture application on the basis that one of the parties, Mr Davis, had not been served with the originating notice of motion within the two-year time limit. The fourth respondent, Anona International Traders Ltd. ("*Anona International*"), was not a party to this motion. It is accepted that Anona International is now the only party claiming ownership of the cash.

12. I pause here to note that there were thus two notices of motion in existence before the Circuit Court, namely (i) the originating notice of motion, and (ii) the notice of motion seeking to dismiss the application. This assumes significance subsequently in that the originating notice of motion mistakenly remained listed before the Circuit Court following the High Court appeal.

13. Returning to the chronology, the motion to dismiss the forfeiture application came on for hearing before the Circuit Court in March 2013. The Circuit Court (Judge O'Donnell) refused the application to dismiss. The three respondents then exercised their statutory right of appeal to the High Court pursuant to section 37 of the Courts of Justice Act 1936 (as amended). This appeal was heard by O'Malley J., and a reserved judgment was delivered on 21 October 2014, *Director of Public Prosecutions v. Humphreys* [2014] IEHC 539. An order allowing the appeal and directing the DPP to pay the costs of the proceedings in the Circuit Court, and of the hearing of the High Court appeal, was made on 11 November 2014. The order was ultimately perfected on 27 January 2015.

14. The effect of the High Court order was to dismiss the forfeiture application in its entirety. There can be no doubt about this. The operative part of the order states that "*the Appeal be allowed*". The appeal, as is clear from the notice of appeal filed on 22 March 2013, was in respect of the judgment and decision of the Circuit Court to dismiss the application of the first, second and third named respondents set out in their notice of motion dated 17 September 2012. That motion is clear in its terms, and it sought to dismiss the "*within application*", i.e. the forfeiture application. The motion did not, for example, limit its scope to an application to dismiss the forfeiture application as against the three respondents who had issued the motion.

15. Moreover, any other interpretation of the effect of the High Court order would be wholly inconsistent with the terms of the judgment of 21 October 2014. The central issue before the High Court in the appeal concerned the interpretation and operation of the two-year time limit. The High Court had to consider what steps had to be taken within the two-year period in order to comply with the same. In particular, the High Court had to consider the argument, made on behalf of the DPP, that it was not

necessary that all relevant parties be served within the two year time period. The High Court rejected this argument, by reference, in particular, to the judgments of the Supreme Court in *KSK Enterprises Ltd v. An Bord Pleanála* [1994] 2 I.R. 128, and *Director of Public Prosecutions v. England* [2011] IESC 16.

16. (The approach of the High Court to the issue of statutory interpretation has subsequently been endorsed by the Supreme Court in *Reilly v. Director of Public Prosecutions* [2016] IESC 59; [2016] 3 I.R. 229).

17. Crucially, the High Court expressly stated that where a statutory time limit requires that an application be brought by way of motion on notice, the notice must be served on all necessary parties within that time limit. See paragraph [67] of the judgment as follows.

> "67. It will be seen that none of the authorities cited directly cover the facts of the instant case. In particular, I am conscious of the fact that this is a case in which, well before the expiry of the relevant District Court order, the Director had sought unsuccessfully to serve certain parties with notice of the intended forfeiture application and had made application to the Circuit Court for directions as to service, including service on Mr Davis. The process of the court was thereby invoked with the specific purpose of ensuring proper service. I am also conscious of the fact that the learned Circuit Court judge, in making his order of the 15th March, 2013, implicitly deemed that those directions had been complied with. However, it seems to me that the statements of principle by the Supreme Court in *KSK Enterprises* and *DPP v England* are broad enough to bind this court to find that, where a statutory time limit requires that an application be brought by way of motion on notice, the notice must be served on all necessary parties within that time limit. Neither the subsequent High Court decisions, nor the introduction of 0.69 of the Circuit Court Rules, have altered that position."

18. As discussed presently, this express finding undermines the argument now made by the DPP in these judicial review proceedings to the effect that the fact that only three of the four respondents had issued the motion to dismiss the proceedings has the effect that the proceedings remain outstanding as against the fourth respondent.

19. That the above represents the correct interpretation of the High Court order and judgment is confirmed by the events of July 2015. More specifically, the forfeiture proceedings were mentioned before O'Malley J. at a sitting in Cork on 30 July 2015. It

seems that senior counsel then acting on behalf of the DPP sought to speak to the minutes of the order. O'Malley J. referred counsel to paragraph [67] of her judgment, and declined to amend or vary the order.

EVENTS BEFORE THE CIRCUIT COURT

20. It will be recalled that, as a result of the various procedural steps, there were, in fact, two notices of motion in the forfeiture application. Notwithstanding the fact that the appeal to the High Court had been successful, with the effect that the forfeiture application was dismissed in its entirety, it seems that the originating notice of motion was mistakenly relisted before the Circuit Court. It seems that the matter appeared before Judge Keys on 22 July 2015, and that the learned Circuit Court judge requested that the matter be mentioned before the High Court (O'Malley J.). As noted above, the matter was mentioned to O'Malley J. on 30 July 2015. O'Malley J. referred counsel to paragraph [67] of her judgment, and declined to amend or vary the order.

21. The matter was listed again before the Circuit Court on 17 December 2015 for submissions, and counsel then acting for the DPP requested the Circuit Court to state a case to the Court of Appeal pursuant to section 16 of the Courts of Justice Act 1947 (as amended). Having consider the matter, the learned Circuit Court judge indicated on 11 March 2016 that he intended to state a case to the Court of Appeal.

22. Leave to apply for judicial review was granted *ex parte* on 9 May 2016.

JURISDICTION TO STATE A CASE

23. The Circuit Court's jurisdiction to state a case is predicated on there being proceedings "*pending*" before the Circuit Court. This follows from the wording of section 16 of the Courts of Justice Act 1947 ("*any matter [...] pending before him*").

24. Leading counsel for the applicants, Mr Feichín McDonagh, SC, relied on the judgment of the Supreme Court in *People (Attorney General) v. Doyle* (1964) 101 ILTR 136 as authority for the proposition that if there was no matter pending before the Circuit Court, then there was no jurisdiction to state a case under section 16 of the Courts of Justice Act 1947.

25. Counsel very properly drew my attention to a later judgment, *State (Harkin) v. O'Malley* [1978] I.R. 269 which overrules a different aspect of *Doyle*. This judgment was then the subject of an exchange of written submissions between the parties.

26. One of the two substantive judgments in *State (Harkin) v. O'Malley* was that of Henchy J. Having outlined the background to *Doyle* at page 284 of his judgment, Henchy J. states that the Supreme Court had

> "disposed of the matter by ruling that Judge Deale had no jurisdiction to state the Case because, it was held, there was not 'any matter pending before him' as is required for a Case which is to be stated under section 16 of the Courts of Justice Act 1947."

27. Henchy J. then went on to reach a different conclusion on the question of criminal procedure at issue and concluded that there was a matter pending before the Circuit Court. This does not seem to affect the general proposition that there must be a matter pending in order to allow the case stated procedure to be invoked. At all events, the approach of the DPP in the present case is that the forfeiture application remains pending before the Circuit Court. I did not understand counsel for the DPP to suggest that there is no requirement for a matter to be pending.

DPP'S POSITION

28. As discussed above, the Circuit Court's jurisdiction to state a case is predicated on there being proceedings "*pending*" before the Circuit Court.

29. The effect of the High Court order of 11 November 2014 was to dismiss the forfeiture application. Accordingly, there is no matter *pending* before the Circuit Court. There is, therefore, no jurisdictional basis upon which the Circuit Court could purport to state a case to the Court of Appeal.

30. Notwithstanding the obviousness of all of this, the DPP has sought to persuade the Circuit Court—and now, in these judicial review proceedings, seeks to persuade the High Court—that there are proceedings pending before the Circuit Court. This argument is advanced on under a number of different headings as follows.

(i) Judgment only applies to parties to the motion to dismiss

31. It is suggested that the order dismissing the forfeiture application is not binding on Anona International on the basis that it was not a party to the motion to dismiss the forfeiture application. With respect, this argument is untenable given the express finding at paragraph [67] of the High Court judgment to the effect that, where a statutory time limit requires that an application be brought by way of motion on notice, the notice must be served on all necessary parties within that time limit. It follows from this that the time limit operates as *jurisdictional bar*. The reason the forfeiture application had been dismissed is that the proceedings had not been served on all necessary parties within time. The forfeiture application was inadmissible by reason of failure to comply with the time limit. It is irrelevant in this regard whether or not Anona International were a party to the motion to dismiss.

(ii) Mr Davis not a necessary party

32. The second argument advanced by the DPP is that Mr Davis was not, in fact, a necessary party. The inference here being that the failure to serve Mr Davis within the two-year time limit does not preclude the DPP from pursuing the forfeiture application as against the *other* parties, and, in particular, as against Anona International. In

argument before me, it was initially suggested by counsel for the DPP that the question of whether Mr Davis was a necessary party had not been considered by the High Court in 2014. This suggestion was incorrect, and counsel ultimately conceded that certainly in the written submissions filed by the DPP in 2014 there is some quite extensive argument as to the position of the respective respondents. (See Transcript of 16 January 2019, page 38).

33. This concession was properly made. It will be recalled that the only party who had not been served within the two-year time period was Mr Davis. Mr Davis' position was, therefore, central to the motion to dismiss the forfeiture application. It would have been a complete answer to the motion to dismiss for the DPP to have persuaded the High Court in 2014 that Mr Davis was not a necessary party to the forfeiture application.

34. As it happens, the question of Mr Davis' status was, in fact, expressly raised by the DPP by way of affidavit, and by way of written legal submissions as follows.

35. An affidavit was filed on behalf of the DPP by Patricia Smullen in response to the motion to dismiss the forfeiture application. The affidavit is dated 1 November 2012. The position of Mr Davis is dealt with as follows.

> "33. I say the second named Respondent [Mr Davis] was only added as a Notice Party/Respondent to the matter after he made an appearance for a Section 38 application in the District Court on 19th May 2010 as referred to hereinbefore. I say and believe that the second named Respondent was not a director of Pacnet Service Ltd at the time of the detention of the cash nor was he a director when the Applicant herein tried to affect service of the Circuit Court Documents. I say and believe that the second named Respondent can have no personal claim to the cash and at all times, all parties have indicated that the third named Respondent Pacnet, by it's employee/director, the first named Respondent had collected the cash so that it could be returned to Anona, the fourth named respondent. I say that notwithstanding that the Company Secretary of the third named Respondent informed me that the second named Defendant was a Director of the Company, the second named Respondent/Notice Party is a not Director but is closely allied with the third named Respondent (if one takes note of his email line of communication as referred to above, namely in May, 2012 the second named

Respondent/Notice Party was using an email [...] and was receiving emails at [...].

34. I say that on the 24th April 2012 our Counsel sought liberty in the Circuit Court have to have the Section 39 Notice of Motion returned for the 1st May 2012. The following day, the 25th April, 2012 I made a Section 38 application in the District Court, both O'Kelly Moylan and Carmody and Company, Solicitors accepted notice [of] the District Court application, and on the 25th April 2012 I issued a copy of this District Court Order to both solicitors. Neither firm indicated at that stage that they were no longer on record for the Respondents.

35. I say and believe that the second named Respondent cannot make the case that he has been prejudiced in anyway because no steps have been taken in the proceedings to date, which affect him adversely or otherwise."

36. The position of Mr Davis was subsequently addressed in the written legal submissions filed in the High Court appeal on 26 March 2014 on behalf of the DPP as follows.

"Why join the second named Respondent/Notice Party in the application?

It is important for Court to know and appreciate that there is no issue with respect to the issue and service of the Originating Notice of Motion and Grounding Affidavit on the fourth named Respondent/Notice Party being the reputed owner of the cash seized and detained. Indeed the fourth named Respondent/Notice Party has not made any issue in relation to the Originating Motion and service thereof. Further, that entity as of yet has not challenged the content of the Grounding Affidavit of Ms Smullen in the Section 39 proceedings.

The first, second and third named Respondents were joined in the Section 39 application out of an abundance of caution and having regard to their respective involvement in possession, the transport and the seizure of the suspected cash as outlined in the Grounding Affidavit of Ms Smullen in the Section 39 proceedings. This is mandated by the Rules of the CCR – Order 69 Rule 5 where it is provided that:

'*The application shall be made on notice to any person from whom the cash was seized and to any person who claims an interest in the cash. The Court may direct that notice of the application be served on such other person or persons, in addition to the respondents(s), as it shall think fit.*'

Each Respondent/Notice Party is an individual Respondent/Notice Party and is entitled to be heard and have separate representation if they so wish and to appear and show cause if they so wish. The second named Respondent/Notice Party personally appeared in the District Court seeking return of the monies on one occasion on behalf of himself and/or the third named Respondent. Then he appointed solicitors Carmody and Co. in respect of same to come on record. The Applicant rejects the contentions of the second named Respondent/Notice Parties but even if the Court were to accept same (which it is respectfully urged not to accept) then same would only avail the second named Respondent/Notice Party

and the Section 39 application against the balance of the Respondents/Notice Parties would stand unaffected."

37. The argument on behalf of the DPP, as set out in Ms Smullen's affidavit, is expressly recorded in the High Court judgment at paragraph [28] thereof.

> "28. Ms Smullen also argued that, in any event, Mr Davis could have no personal claim on the cash and was not a director of Pacnet either at the time of the detention of the cash or at the time when service of the forfeiture application was being made. Ms Carmody agreed with both of these assertions, but maintained that, the Director having chosen to join Mr Davis as a respondent to the application, it was necessary to serve him with the proceedings within the two-year period."

38. The High Court's finding on the point is then set out at [68].

> "68. Mr Davis in this case had been joined in the District Court and it was at all times thereafter considered by the Director that he was a proper person to be made a respondent to the forfeiture application. As it happened, he was not served within the time limit, in circumstances where the Director had available a number of options in relation to substituted service or, perhaps, deeming service good. This cannot in reality be described as a situation where he was evading service, given his ongoing contact with Ms Smullen and his nomination of his new address."

39. As appears, the High Court took the view that having chosen to join him as a party, the DPP could not then argue he was an unnecessary party. The DPP may disagree with the rationale of the High Court in this regard, but it cannot seriously be contended that this issue was not heard and determined by the High Court in 2014.

40. It is also clear from the affidavit evidence, and from the written legal submissions which had been filed before the High Court in 2014, that the High Court was put on express notice of the fact that only one party was claiming ownership of the seized cash, namely, Anona International.

41. Accordingly, the precise issues which counsel for the DPP now contends should be heard and determined by the Circuit Court were, in fact, ruled upon by the High Court in 2014.

42. Even if these issues had not been ruled upon by the High Court in 2014, this would not allow the DPP to invoke the case stated procedure. It is a fundamental principle of our legal system that parties will not be allowed to relitigate matters which have been the subject of a final judgment by a court of competent jurisdiction. This principle of *res judicata* applies not only to issues which were actually decided in earlier litigation, but also applies to arguments that could have been—but were not—raised in earlier litigation. This latter aspect is referred to as the rule in *Henderson v. Henderson.*

43. Applying these principles to the facts of the present case, the DPP—when confronted with the motion to dismiss the forfeiture application—could have sought to resist the motion on a number of different grounds. First, the DPP could have argued that, as a matter of statutory interpretation, all that was required in order to comply with the two-year time limit was that the originating motion be issued, and that there was no requirement that any of the parties be served within the two-year period. Secondly, the DPP could have argued that all necessary parties had, in fact, been served, and that Mr Davis was not a necessary party. These arguments were all open to the DPP in principle. If, however, the DPP did not pursue a particular argument, this omission does not allow her to challenge the correctness of the High Court judgment subsequently, or to suggest that the unargued point can now be run before the Circuit Court. As discussed in more detail under the next heading, an appeal to the High Court involves a *re*hearing, and the High Court judgment is final and conclusive.

(iii) Procedural v. Substantive jurisdiction

44. The third argument advanced on behalf of the DPP is to the effect that the High Court in 2014 was exercising a narrow procedural jurisdiction whereas the Circuit Court has a wider substantive jurisdiction.

45. The argument was put as follows in oral argument before me. (See Transcript, 16 January 2019, page 23).

> "[SENIOR COUNSEL FOR DPP]: Our position is that Ms. Justice O'Malley's decision was on a narrow procedural point. The Circuit Court had a much wider remit to examine not only procedural points but also the substantive application before it under Section 39. And part of the Circuit Court's obligation under the Criminal Justice Act is to identify who the appropriate respondents to a Section 39 application are. What is mandated under Section 39 is that there are a limited number of necessary Respondents. They are expressly the person from whom the cash was seized, who is the First Named Applicant in this issue, and the person, or in this instance the body who has expressed an interest in the cash, in this instance, that's the Notice Party, Anona Limited. The Act thereafter gives the Court discretion in relation to who else should be an appropriate Respondent. In our submission, that is an unusual provision in that it puts an onus on the Court, the Court which has seisin of determining the substantive issue, to determine who are appropriate Respondents.
>
> MR. JUSTICE SIMONS: Just to be clear, Mr. McGinn, are you saying that notwithstanding the finding of Ms. Justice O'Malley that Mr. Davis was a proper party, that the Circuit Court has jurisdiction to reach a different conclusion?
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> MR. McGINN: Yes, because the High Court was not asked to look at the interests of the various parties.
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> MR. JUSTICE SIMONS: But the High Court was asked expressly to consider whether Mr. Davis was a necessary party.
>
> MR. McGINN: The High Court seems to have been asked, or seems to have been alerted to Mr. Davis's peripheral involvement in the investigation."

46. As appears, counsel for the DPP appears to accept that the logic of his client's position is that the Circuit Court would be entitled to reach a finding contrary to that of the High Court in 2014.

47. With respect, the above submission on behalf of the DPP is irreconcilable with the principle of *res judicata* and with the hierarchy of the courts. An appeal to the High Court from the Circuit Court proceeds by way of rehearing of the action or matter in which the judgment or order the subject of such appeal was given or made. See section 37 of the Courts of Justice Act 1936 (as amended) which regulates appeals from the Circuit Court where no oral evidence was given.

48. Section 39 of the Court of Justice Act 1936 provides as follows.

> "39.—The decision of the High Court or of the High Court on Circuit on an appeal under this Part of this Act shall be final and conclusive and not appealable."

49. The decision of the High Court to dismiss the forfeiture proceedings is now *res judicata*. It cannot be questioned by the DPP.

50. It is inaccurate to characterise the motion to dismiss the forfeiture application as being narrow or merely procedural in nature. The motion raised a fundamental issue of jurisdiction, based on alleged non-compliance with the two year time limit. This issue was capable of being dispositive of the proceedings. Such jurisdictional issues are often dealt with as preliminary issues. This does not in any undermine the importance of such applications.

51. In rehearing the motion to dismiss, the High Court had precisely the same powers as the Circuit Court. The High Court considered the question of whether Mr Davis was a necessary party by reference to sections 38 and 39 of the Criminal Justice Act 1994 (as amended).

52. The distinction which the DPP seeks to draw between procedural and substantive issues is misconceived insofar as it appears to suggest that the Circuit Court and the High Court have different roles or competences. The High Court on appeal exercises precisely the same jurisdiction as the Circuit Court does at first instance. Thus, in hearing and determining the application to dismiss the proceedings, both courts were empowered to consider the same matters. The only distinction is that the High Court's decision is final and conclusive. The question of whether the forfeiture application had been made within the two year time-limit is thus *res judicata*, and this finding is binding on the DPP.

DISCRETION IN JUDICIAL REVIEW

53. In circumstances where I have concluded that the applicants have made out grounds for judicial review, it remains for me to consider whether relief ought to be refused as a matter of discretion. It is well established that judicial review is a discretionary remedy, and that the court is entitled, in principle, to withhold relief from an otherwise entitled applicant by reference to factors such as, for example, the existence of an adequate alternative remedy.

54. Counsel on behalf of the DPP urges this court to exercise its discretion to refuse relief by way of judicial review. It is submitted that the High Court should not make any order which would prevent the Circuit Court from purporting to state a case to the Court of Appeal. Instead, the objection that there are no proceedings pending before the Circuit Court should be raised as a preliminary objection before the Court of Appeal. The advantage of this approach, it is said, is that the Court of Appeal—assuming that it decides that there is jurisdiction to entertain the case stated—will then be able to move on immediately to consider the substantive issues raised in the case stated. By contrast, the High Court in these judicial review proceedings would be confined to a consideration of the jurisdictional objection.

55. For the reasons which follow, I have reached the conclusion that this is not a case where the High Court should exercise its discretion to refuse relief.

56. First, the pressure of business before the Court Of Appeal is such that that court might not be in a position to provide a hearing date for the hearing of any case stated for some considerable period of time. By contrast, the question of jurisdiction has been fully argued before this court, and could be addressed immediately by way of a judgment. The cash the subject-matter of the forfeiture application was first seized and detained in May 2010, that is more than eight years ago. The Criminal Justice Act 1994 (as

amended) envisages that any forfeiture application will be made within a two year period. It can be inferred from this that the legislative intent is that such an application would then be determined within a reasonable time thereafter. The approach of the DPP seeks to query the status of the cash, and it seems preferable that this be addressed now rather than allowed to drag on further.

57. Secondly, leading counsel for the applicants, Mr McDonagh SC, has made the valid point that had his clients not instituted these judicial review proceedings—and had instead engaged with the preparation of a draft of a case stated for submission to the Circuit Court judge—then there would be a real risk that they would be accused of having *acquiesced* in the making of a case stated. Indeed, it is clear from a review of the transcript of the hearing before the Circuit Court on 17 December 2015 that a suggestion of acquiescence was already being made against the applicants on the basis that the very fact that there was a hearing before the Circuit Court as to what should be done suggested that there was a live matter still before that court. It is preferable therefore that the objection to jurisdiction be dealt with now in the context of these judicial review proceedings.

58. The third factor in favour of granting relief is that the High Court should seek to protect and uphold the finality of its own orders. For the reasons set out above, I have concluded that the effect of the order of 11 November 2014 was to dismiss the forfeiture application in its entirety. It would represent an affront to the dignity of the High Court to allow the DPP to secure the making of a case stated in the very proceedings which the High Court has dismissed in 2014.

59. Having considered all of these factors, I have come to the view that this is not a case in which relief should be refused as a matter of discretion. It would not represent an adequate alternative remedy to leave over the threshold question of whether the Circuit

Court has jurisdiction to state a case to the Court of Appeal. The applicants have made out grounds for judicial review. To deny them relief would give rise to prejudice in terms of delay and the risk of an allegation of acquiescence. Moreover, the High Court should seek to protect and uphold the finality of its own orders.

60. Any order made by this court is, of course, amenable to an appeal to the Court of Appeal. The DPP is thus not prejudiced by the jurisdiction objection being dealt with in the judicial review proceedings.

PROPOSED ORDER

61. For the reasons outlined above, I propose to grant the following relief to the Applicants.

62. A declaration that the effect of the judgment and order of the High Court of 11 November 2014 in the proceedings entitled "*Director of Public Prosecutions v. Humphreys & Ors.*" (High Court Record Number 2013 No. 69 CA) was to dismiss the forfeiture application pursuant to section 39 of the Criminal Justice Act 1994 (as amended) in its entirety. There are, accordingly, no proceedings pending before the Circuit Court, and the Circuit Court does not have jurisdiction to state a case to the Court Of Appeal pursuant to section 16 of the Courts of Justice Act 1947.

63. An order of prohibition restraining the Director of Public Prosecution from taking any further steps to progress the purported case stated from the Circuit Court in the forfeiture application referred to in the declaration above.

64. I will hear counsel as to whether any further order is appropriate or necessary.

Approved

APPROVED 25.1.2019 [illegible signature]