



THE COURT OF APPEAL
CIVIL

UNAPPROVED

Court of Appeal Record Number: 2023/116 COA

High Court Record Number: 2021/753 JR
Neutral Citation Number [2024] IECA 125

Ní Raifeartaigh J.
Power J.
Meenan J.

BETWEEN/

M.A. AND Y.B.

**APPLICANTS/
RESPONDENTS**

- AND -

THE MINISTER FOR JUSTICE

**RESPONDENT/
APPELLANT**

JUDGMENT of Mr. Justice Charles Meenan delivered on the 21st day of May 2024

Introduction:-

1. I refer to the judgment delivered in this matter on 2 February 2024, neutral citation number [2024] IECA 26. This Court allowed the appeal, holding that the appellant was entitled to exclude certain documentation furnished concerning WhatsApp/text messages and communications between the respondents when considering the application for a visa.

2. The High Court determined the matter on legal grounds 8 and 9 in the Statement of Grounds without determining others. Section 2 of the respondent's notice stated:-

“Having decided to quash the impugned decision on the ground outlined at paragraphs 37 – 40 of his decision, Owens J. did not make a determination on the remainder of the respondent's grounds (apart from ground 9) as set out at paragraph (e) of the statement of grounds, which appears to have been rejected). In these circumstances, should the Court of Appeal decide to allow the appeal in respect of the said ground outlined at paragraphs 37 – 40 of the decision of Owens J, the appropriate course of action would be to remit the matter to the High Court so that a determination on the remainder of the respondent's grounds would be made for the first time in the High Court.”

3. The appellant and the respondents were invited to furnish written submissions concerning both the issues of remittal to the High Court and costs. Subsequently, submissions were filed by both the appellant and the respondents.

Remittal to the High Court:-

4. Both parties are in agreement that the various grounds not determined by the High Court are to be remitted to that court for consideration by a different trial judge. The respondent has identified those grounds as being grounds 1 – 7 and 10 – 14.

Costs:-

5. The appellant submitted that she was entitled to bring and pursue the appeal and was vindicated in her stance, having regard to the judgment delivered by the Court. Thus, the appellant maintains she is entitled to her costs both in this Court and the High Court.

6. The respondent submitted that *“.. the existing High Court costs and the costs of the appeal before this Honourable Court should be made costs in the cause, with the ultimate*

successful party being awarded these costs. The “event” for costs will be the winning or the losing of the case.”

7. Clearly the appellant has been “*entirely successful*” in her appeal and no factors have been identified as to why she should not be entitled to her costs. However, the remaining undecided grounds have been remitted to the High Court for consideration. Should the respondents be successful, they may be entitled to an order for their costs but, clearly, this is a matter for the High Court. In these circumstances, this Court will award the appellant the costs of the appeal but with a stay on such order pending the determination of the remaining issues in the High Court.

Conclusion:-

8. This Court will make the following orders:-

- (a) An order allowing the appeal and setting aside the orders of the High Court, including the order for costs.
- (b) An order remitting grounds 1 – 7 and 10 – 14 for consideration by the High Court by a judge other than the trial judge.
- (c) An order for costs of the appeal in favour of the appellant with a stay on such order pending the determination of the issues remitted to the High Court.

9. As this judgment is being delivered electronically, Ní Raifeartaigh and Power JJ. have authorised me to state that they agree with it.