

APPROVED



**AN ARD-CHÚIRT
THE HIGH COURT**

[2026] IEHC 390

Record No. 2024/1293JR

BETWEEN/

MJ

APPLICANT

-AND-

THE MINISTER FOR JUSTICE

RESPONDENT

-and-

**AN ARD-CHÚIRT
THE HIGH COURT**

Record No. 2025/493JR

BETWEEN/

AA

APPLICANT

-AND-

THE MINISTER FOR JUSTICE

RESPONDENT

(No. 2)

(Costs)

JUDGMENT of Mr. Justice Conleth Bradley delivered on the 18th day of June 2026

INTRODUCTION

1. This judgment deals with the costs applications arising from the judgment in joint cases *MJ and AA v The Minister for Justice* [2026] IEHC 51 (“the principal judgment”), which refused each of the Applicants’ applications for orders of *mandamus* directing that a ministerial decision issue on their respective applications for citizenship or naturalisation pursuant to the provisions of the Irish Nationality and Citizenship Act 1956 (“the 1956 Act”) and declaratory relief to the same effect and having regard to the delay since their respective applications for citizenship.
2. These judicial review applications had been listed together for hearing as being representative of several similar cases where decisions on naturalisation applications were outstanding because the Minister for Justice/Department of Justice (“the Minister”) awaited receipt of the outcome of background checks being carried out by An Garda Síochána in respect of the Applicants prior to finalising the assessment as to whether the various applicants were of good character pursuant to s. 15(1)(b) of the 1956 Act.
3. In summary, the judge in charge of the list had created a holding list and these cases were listed to be heard together in circumstances where it was decided that the case of Mr. AA (having received a declaration of refugee status on 9th September 2020) and the case of Ms. MJ represented a broad factual spectrum of cases which raised the same or similar legal issues.

MS. MJ

4. Gavin Keogh BL, counsel for Ms. MJ, referred to his solicitor's letter dated 6th February 2026 sent to the Minister after the principal judgment was delivered which stated that there should be no order as to costs as Ms. MJ's application for judicial review was a pathfinder case which determined a number of other cases.
5. Mr. Keogh BL pointed out that the holding list had been created for that purpose and that as of 4th April 2026, there were approximately 158 cases in addition to the cases involving Ms. MJ and Mr. AA in that holding list and whilst some of the cases might proceed on different courses, some would also be rendered moot save for costs arising from the principal judgment.
6. He stated that Ms. MJ's application had been initially brought in 2024 and had been assigned an earlier hearing date in May 2025 but then together with Mr. AA's case, they were subject to being later case managed and were designated as two pathfinder cases, with hearing dates assigned for October 2025.
7. Mr. Keogh BL submitted, therefore, that Ms. MJ's judicial review application was a pathfinder case which had the capacity to resolve a number of the 158 cases.
8. He further submitted that there was also a degree of novelty in Ms. MJ's case and that there was a systemic issue in relation to the dispute between the parties as to the extent to which there was now clarity on the law in relation to the delay in the processing of

citizenship applications. He stated that Ms. MJ had agreed with the State's nomination of her challenge as a pathfinder/test case.

9. As representative of a number of other cases, it was submitted that if a costs order was made against Ms. MJ she would be placed in an invidious position compared to those other cases which, as part of the larger tranche of 158 cases in the holding list, would have their cases determined by the principal judgment. In such circumstances, it was submitted that it would be unjust to impose a costs order in respect of Ms. MJ where her case was part of public interest litigation as a 'pathfinder' or 'test' case.
10. As part of the factors set out in *Little v The Chief Appeals Officer & Ors (No. 2)* [2024] IESC 53 ("*Little (No. 2)*"), it was submitted that as Ms. MJ's proceedings were against the Minister where the public law remedy of *mandamus* was sought, there was an element of public importance as the disputed issue had now been clarified and this affected persons beyond Ms. MJ's personal position and was a broader systemic issue.
11. The central submission of Mr. Keogh BL was that there should be no order as to costs.
12. In relation to seeking his costs as against the Minister, Mr. Keogh BL fairly accepted that this presented a more difficult hurdle to overcome and he accepted that the most that he could seek was a percentage or portion of his costs as the unsuccessful party. He referred to the cases discussed in the joint cases on costs in *Daly and Murphy v An Taoiseach and Ors* [2026] IEHC 133, including *Curtin v Dáil Éireann* [2006] IESC 27, and suggested that an appropriate level of costs to be awarded was 50% of their costs.

13. In summary, therefore, Mr. Keogh BL submitted that Ms. MJ's application, while of personal interest, was a public interest, pathfinder or test case of systemic importance where the judgment clarified an area of the law which would benefit other applicants in their application for citizenship and also the State and would ultimately result in less cases having to be determined which would impact positively on court resources.

MR. AA

14. In her submissions, Ms. Marie Flynn BL, counsel for Mr. AA, referred to the letter of 25th September 2025 from the Chief State's Solicitors Office ("CSSO") where Mr. AA's solicitors had been asked to agree to his case going forward as a test case and identified the benefit of doing so, *inter alia* stating that Mr. AA's case "*most exhaustively and comprehensively addresses the relevant issues, and so that any decision in relation to it would most inclusively help resolve the other affected cases, the Respondent is of the view that Mr. AA would be the appropriate case to run alongside [Ms. MJ's case]*".

15. It was submitted, therefore, having regard to the judgment of Murray J. in *Little (No. 2)* and because both the Minister and Mr. AA had agreed that his would be a pathfinder or test case, the appropriate starting point would be that there should be no order as to costs.

16. It was submitted that it was common case that Mr. AA's case satisfied the definition of public interest litigation and, therefore, having regard to paras 34, 35(vi), 50, 53 and 69 of *Little (No. 2)* (per Murray J.), it was appropriate that no order as to costs would be

the initial starting position as this was a public interest case having regard, *inter alia*, to the existence of a holding list of approximately 158 cases, which lay behind Ms. MJ and Mr. AA's cases and that none of the disapplying factors set out in *Little (No. 2)* applied in this instance.

17. In response to the position indicated in the Minister's written submissions which had argued that Mr. AA's position did not satisfy the criteria in *Little (No. 2)* which addressed a 'no costs' order, Ms. Flynn BL submitted the fact that Mr. AA had a personal interest was not a disapplying factor, in of itself, as per para. 35(ii) of the judgment of Murray J. in *Little (No. 2)*.

18. Further, Ms. Flynn BL submitted that the application of well-established case law in the principal judgment did not mean that the principal judgment did not develop the law.

19. Reference was again made to the holding list and the significant number of cases where leave to apply for judicial review had been granted on the facts of those individual cases and then placed in the holding list awaiting the outcome of Mr. AA's case. This, it was submitted, presupposed that the legal issue in those cases must await the outcome of the chosen test or pathfinder cases and it was understood that the CSSO would be writing to the applicants in the holding list arising from the principal judgment.

20. Ms. Flynn BL submitted that Mr. AA's case in fact was never in a holding list and his solicitors had in fact resisted applications to put his application for judicial review into a holding list on the basis that it was not governed by Ms. MJ's case. It was submitted

that leave was ordered by the High Court in or around April or May of 2024 and on the return date the State had indicated that the issue in the case might be addressed in another case, as a test case, which was opposed on behalf of Mr. AA.

21. Opposition papers were directed by the High Court and then in September 2024, the Minister identified it as a case to go forward as a pathfinder/test case.

THE MINISTER

22. On behalf of the Minister, Mr. Murphy SC, sought his costs in both cases.

23. He submitted that the Minister having been entirely successful as per s. 169(1) of the Legal Services Regulation Act 2015 (“the 2015 Act”), the starting point was that the Minister was presumptively entitled to his costs unless ordered otherwise, having regard to the particular nature and circumstances of the cases.

24. Mr. Murphy SC accepted that it was agreed by the parties that Ms. MJ’s case was put forward as being a representative example of many cases that sought to argue the point but he submitted that the State had always maintained the position that these cases fell to be governed by general well-established principles relating to the law of *mandamus* and it was not the case that there was any lack of clarity in the law which had to be addressed.

25. A more nuanced position was put forward in relation to Mr. AA’s case where it was submitted that the State had opposed whether it was necessary for a case, where the

party was a declared refugee, to be added in order to address the legal arguments raised but that it had been directed by the court that such a case should be added. It was submitted that once the court had directed the addition of such a case, the position was then adopted that Mr. AA's case was sufficiently representative of other similar cases.

26. It was submitted that generally an assigned status as a 'lead' or a 'pathfinder' case was not determinative of the issue of costs but was one of a series of factors which was required to be considered.

27. It was submitted that the principal judgment had applied well-established case-law and that these cases did not involve legislative provisions which required to be clarified.

DECISION

28. To recap, these judicial review applications were listed together for hearing as being representative of several cases where, *inter alia*, the relief of *mandamus* was sought directing that a ministerial decision issue on the Applicants' applications for citizenship or naturalisation pursuant to the provisions of the 1956 Act.

29. The central issues in each case concerned whether the period of time which had elapsed since the initial applications for citizenship were made and the engagement thereafter by the Minister with the Applicants and their legal advisers was such as to amount to a wrongful refusal to make a decision by the Minister, and, whether the delay in each case (40 months in Ms. MJ's case and 41 months in Mr. AA's case from the date of

their respective applications for naturalisation to the hearing) was unjustified, or so egregious, as to be tantamount to a refusal in its effect.

30. The principal judgment *inter alia* determined that there had not been a refusal to make a decision on each of the Applicants' applications for citizenship or that same would amount to a wrongful refusal or that the delays in making a decision in each of the cases of Ms. MJ and Mr. AA were "*such an egregious and unjustified delay*" in dealing with the their applications "*so as to be tantamount to a refusal in its effect*" and *inter alia* referenced *Singh v The Minister for Justice and Equality; Zydek v The Minister for Justice and Equality; Shahid Arshad v The Minister for Justice and Equality* [2022] IEHC 437 ("*Singh*") including the observations of the High Court (Hyland J.), at paras 69, 75 and 79, *Point Exhibition Co. Ltd v The Revenue Commissioners* [1993] 2 I.R. 551 at p. 555 and a number of other authorities.
31. The principal judgment recorded that the Minister had responded to each of the letters of inquiry sent on behalf of the Applicants and had explained that the delay arose because of outstanding information over which the Minister had no control and each of Applicants have been informed and made aware of the position.
32. In these cases, after judgment was delivered and prior to the costs hearing, Mr. AA had received confirmation from the Minister that his application for citizenship had been approved in principle and that further documentation was required to be submitted by him before it could be finalised.

33. At the costs hearing, it was also indicated that Ms. MJ's solicitor had just received a similar confirmation that her application had been approved in principle.
34. Generally, on behalf of the Minister, it had been agreed that the cases of Ms. MJ and Mr. AA would go forward as pathfinder or test cases. It was, for example, recognised in the correspondence of the CSSO, that that there would be a systemic benefit to the State given the number of cases, to have such cases go forward as a pathfinder case.
35. While it was also accepted at the costs hearing that the applications for judicial review in the cases of Ms. MJ and Mr. AA satisfied the criteria at para. 68 in *Little (No. 2)* of being public interest cases, I do not consider that these applications for judicial review come within the exceptionality described in para. 71 of the judgment of Murray J. in *Little (No. 2)* which would warrant exercising my discretion in favour of granting costs to the unsuccessful parties.
36. In addition, there is, I believe, a distinction to be made between pathfinder cases which are dispositive of a large volume of cases by virtue of the large number of cases which have been issued (and listed in a holding list) but which have been determined on established legal principles relating to the law of *mandamus* in contrast to pathfinder cases which address some lack of clarity in perhaps an ambiguously drafted statutory provision. These applications for judicial review fall into the former category and there is, I consider, no basis for the Applicants in each case recovering a portion of their costs.
37. Turning to the question as to whether costs should be awarded to the Minister or whether there should be no order as to costs, at para. 68 of his judgment in *Little (No.*

2), Murray J. observed that the High Court enjoyed a discretion not to award costs against an unsuccessful plaintiff or applicant in public interest proceedings.

38. At para. 69 of *Little (No. 2)*, Murray J. stated that in determining whether to exercise that discretion not to award costs against an unsuccessful plaintiff or applicant in public interest proceedings, regard had to be had to all the facts and circumstances and he referenced a number of non-exhaustive factors at para. 35 when carrying out that balancing exercise.

39. Accordingly, whilst the Applicants would have obtained a personal advantage if successful, it is also the case – as accepted in correspondence on behalf of the Minister – that the determination of these applications for judicial review was likely to have a significant effect on many of the cases in the holding list and the category of persons affected by the legal issues by virtue of the volume of cases which had been brought.

40. Against that, in assessing the strength of the Applicants' arguments for an exemption from costs in proportion to the strength of their respective underlying proceedings, these judicial review applications involved the application of what I consider to be established principles of law (dealing *inter alia* with the remedy of *mandamus*) in the context of a large number of similar cases which were placed in a holding list.

41. The systemic importance lies in the possible disposal of those cases in which this similar issue was raised and the general benefits which ensue when litigation is finally concluded rather than those cases raising new points of law or clarifying uncertain legislation.

42. Further, I do not consider that these applications for judicial review fall within the category of cases where the determination of costs would be likely to have a significant deterrent effect on the category of persons affected by the legal arguments raised.
43. However, the determination of costs is a balancing exercise which can include case-specific factors. While I appreciate that the CSSO's letter of 23rd March 2026, furnished at my request, updated the position in relation to other pathfinder cases at that point, the examples cited only serve to emphasise the importance of the particular circumstances and features of any given case.
44. In the cases of Ms. MJ and Mr. AA, I consider that each of these applications for judicial review were treated by all parties generally as pathfinder cases selected from a large cohort of pending claims, some of which had been placed in a holding list, for the purpose of determining a legal argument which had been raised in many of the cases in that holding list and in that sense they were pathfinder cases: see, by analogy, para. 35(iv) of *Little (No. 2)* per Murray J. Therefore, in the exercise of my discretion, I consider that it is appropriate not to award costs against each of the Applicants whose cases were selected to go forward on that basis.
45. In the circumstances, therefore, each of the parties in both cases will be responsible for their own costs and I shall make no order as to costs in each of these judicial review applications.

CONLETH BRADLEY

19th June 2026