



AN CHÚIRT ACHOMHAIRC
THE COURT OF APPEAL

APPROVED – NO REDACTION NEEDED

Court of Appeal Record Number: 2026 24
High Court Record Number: 2024 566 JR
Neutral Citation Number: [2026] IECA 148

The President
Meenan J.
Collins J.

BETWEEN/

MUHAMMAD HAMZA

APPLICANT/RESPONDENT

- AND -

THE MINISTER FOR JUSTICE

RESPONDENT/APPELLANT

JUDGMENT of Mr. Justice Anthony M. Collins delivered on the
30th day of July 2026

I. Scope of the Appeal

1. This appeal by the Minister for Justice (‘the appellant’) against the judgment and order of the High Court (Barry O’Donnell J.) of 14 January ([2026] IEHC 14) and 29 January 2026 respectively, requires the Court to reflect upon the scope and application of R.S.C. Ord. 29, r. 1. By that rule, a party which requires security for costs from another party is at liberty to apply for it on notice to that party. Where the latter does not, within forty-eight hours after service thereof, undertake by notice to comply therewith, the party seeking security is at liberty to apply to the court for an order that the said party furnish such security. By R.S.C. Ord. 29, r. 3, a defendant who seeks an order for security for costs by reason of a plaintiff being resident out of the jurisdiction of the court must file a satisfactory affidavit that discloses it has a defence on the merits. In *Broadnet Ireland Ltd. v. Director of Telecommunications Regulation* [2000] 3 I. R. 281, 293, Laffoy J. held, by reference to R.S.C. Ord. 84, 20(6), now r. 20(7), that security for costs is available in judicial review applications.

II. Background

2. On 24 June 2024, the High Court (Hyland J.) granted Muhammad Hamza (‘the respondent’) leave to apply for an order of *certiorari* to quash the appellant’s decision of 23 January 2024 to refuse him a visa to enter the State for the purposes of employment. The appellant filed a Statement of Opposition in the Central Office of the High Court on 29 November 2024. It traverses the grounds upon which leave was granted, represents that the proceedings are moot and asserts that the submission of a fresh visa application was a more appropriate remedy. Paragraph 4 of the

Statement of Opposition pleads that the appellant is entitled to security for costs in circumstances where the respondent is ordinarily resident outside of the State, the EU “*and Lugano area*”, the appellant has a defence on the merits and it is believed the respondent has no assets within the State amenable to an order for costs in favour of the appellant in the event such an order is made.

3. By Notice of Motion dated 30 May 2025, the appellant sought an order pursuant to R.S.C. Ord. 29, r. 1 to direct the respondent to provide security for costs, grounded upon an affidavit of Mr. Cillian Thornton, Solicitor of that same date. That affidavit avers that the appellant contests, and has a good defence on the merits to, the judicial review application, such that there is a *prima facie* defence. The respondent is ordinarily resident outside the State, the EU “*or a Lugano country*”: hence there is a *prima facie* basis to make the order sought. It asserts that the proceedings have no human rights element and do not engage rights at EU law, the European Convention on Human Rights or the Constitution of Ireland.

4. Mr. Thornton’s affidavit exhibits a chain of correspondence between the parties’ respective solicitors as to the amount of security to be provided. By letter of 26 March 2025, the appellant represented that the National Treasury Management Agency had estimated the total costs of defending the judicial review application on a party and party basis at €20,000. It called upon the respondent to furnish 1/3 of that figure, or €6,667.00, as security. The respondent’s solicitor replied by email dated 7 April 2025, wherein he did not dispute that figure but communicated his instructions that “*due to our client’s financial circumstances he is simply not in a*

position to provide security for costs in the amount sought.” The email further observed that applications of a similar nature had proceeded without security for costs being sought and that some of those had been successful. The appellant’s solicitors’ letter of 17 April 2025 reiterated the request for security for costs in the amount stated in the letter of 26 March 2025.

III. The High Court Judgment

5. It is undisputed that the appellant has a *prima facie* defence to the application for judicial review, even if the respondent contests the strength of that defence. The respondent is ordinarily resident in the Islamic Republic of Pakistan, which is neither an EU Member State nor a signatory to the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters done at Lugano on 30 October 2007 (‘Lugano Convention’). He has never resided in Ireland. Whilst the respondent did not tender sworn evidence to that effect, para. 20 of the judgment under appeal finds that the respondent is unable to meet any requirement for security. Paragraph 29 of the judgment under appeal holds that the proceedings do not raise human rights issues or engage rights at EU law, and the respondent did not seriously challenge the veracity of Mr. Thornton’s averment to that effect.

6. The judgment under appeal considered the High Court judgments in *A.K. (Somalia) v. Minister for Justice and Equality* [2018] IEHC 434 and in *G.T. v IPAT & the Minister for Justice* [2025] IEHC 473. Paragraph 29 of the judgment under appeal observed that these judgments had features that are not present in

this appeal. They involved judicial review applications in the context of claims for international protection, thereby engaging issues of human rights and EU law. The applicants in both of those cases had resided in the State and sought to address, in part at least, decisions that had led to their exclusion from its territory.

7. Paragraph 30 of the judgment under appeal noted that both judgments recorded a concern that the effect of granting security for costs would be that a judicial review challenge for which leave had been granted could not proceed. In *A.K. (Somalia) v. Minister for Justice and Equality*, Humphreys J. had observed that, from a systemic point of view, cases challenging visa refusals could be delayed considerably were applications for security for costs to become commonplace. The respondent in this appeal submitted there was a risk that the quality of decision making on visa applications could be adversely affected were avenues of challenge to be shut off by the frequent grant of security for costs.

8. Paragraph 31 of the judgment under appeal accepted that the State has a legitimate concern to avoid situations where it is exposed without adequate recourse to the costs of successfully defending judicial review applications by persons who are effectively beyond the reach of costs orders. Paragraph 32 of the judgment under appeal held that whatever decision was arrived at on the motion was likely to result in some level of injustice. If the case proceeded without security and the respondent failed to prove his case the appellant would probably be unable to recover his costs. If security was ordered, the respondent would be unable to proceed with a case that

met the criteria for a grant of leave to apply for judicial review, with the consequence that a potentially successful case might be stifled.

9. Paragraph 33 of the judgment under appeal concluded by refusing to grant the application for security for costs on the ground that: “*where the consequence of an order for security for costs is that the claim will not proceed and in effect be terminated without any adjudication on the merits, I consider that the just outcome should be that the application should be refused.*”

IV. Discussion

10. Was the High Court’s approach to the application for security for costs under R.S.C. Ord. 29, r. 1 correct in law?

11. In *Collins v. Doyle* [1982] I.L.R.M. 495, 496 Finlay P. extracted the following principles from the case-law opened to him:

(1) *Prima facie a defendant establishing a prima facie defence to a claim made by a plaintiff residing outside the jurisdiction has got a right to an order for security for costs.*

(2) *This is not an absolute right and the court must exercise a discretion based on the facts of each individual case.*

(3) *Poverty on the part of the plaintiff making it impossible for him to comply with an order for security for costs is not even when prima facie established, of itself, automatically a reason for refusing the order.*

(4) *Amongst the matters to which a court may have regard in exercising a discretion against ordering security is if a prima facie case has been made by the plaintiff to the effect that his inability to give security flows from the wrong committed by the defendant.*

...

*Although I accept the disapproval expressed by the Supreme Court in *Heaney v. Malocca* [[1958] I.R. 111] of the decision in *Flynn v. Rivers* [86 I.L.T.R. 85] holding poverty in effect to be an absolute answer to an application for security, I am*

impressed by the apparent injustice of requiring a person who cannot provide security to do so when his inability may flow from the wrong of the defendant. In general it would appear to me that the principle underlying a defendant's right to security for costs must be that he should not suffer from an inability to recover the cost of successfully defending the claim arising from the fact that the unsuccessful plaintiff resides and has his assets outside the jurisdiction of the court.

12. In *Fares v. Wiley* [1994] 2 I.R. 379, 381, O'Flaherty J. (*nem. diss.*) accepted as correct the four criteria Finlay P. identified at the beginning of the passage just cited. In *Ditt v. Krohne* [2012] 3 I.R. 120, 124, Ó Néill J. cited the final sentence of that passage before he observed that: “... *notwithstanding the absence of express provision in that regard in Ord. 29, the determinative factor entitling a defendant to seek to an order for security for costs in Irish law is that the plaintiff both resides and has his assets outside of the jurisdiction of the Irish courts, or to put it another way, does not have assets within the jurisdiction.*” Ó Néill J. referred to Murphy J.'s statement in *Proetta v. Neil* [1996] 1 I.R. 100, 104 that “... *residence abroad is not merely a precondition but it is of itself the factor which gives the right to demand security subject only to the qualification that the right is not absolute and falls to be exercised having regard to all of the appropriate matters which the court would take into account in exercising its discretion.*”

13. At 125-126, Ó Néill J. held that:

If residence outside the jurisdiction and impecuniosity are not of themselves the factors which entitle a defendant or respondent to an order for security for costs, but are merely matters to be taken into account by the court in exercising its discretion, what then is the decisive or determinative factor which establishes a threshold or test which will lead the court

to exercise its discretion in favour of the granting or refusing of the order.

In my opinion, this can only be the impossibility of enforcement of a costs order against the plaintiff in question; or substantially increased difficulty or expense in enforcing such costs order as compared to the enforcement of such an order against a plaintiff resident in Ireland or who had sufficient assets in Ireland.

In this context, it is to be observed that impecuniosity would have to be considered an irrelevance because if impecuniosity of an Irish resident plaintiff is not a ground for security for costs, then impecuniosity of a foreign resident should, in like manner, be discounted. To do otherwise is to risk breaching the principle of equality before the law as set down in Article 40.1 of the Constitution.

14. Ó Néill J. concluded his judgment at 132:

In attempting to resolve the contentious issues in this case, I am very mindful of the fact that the jurisdiction to order security for costs under Ord. 29 involves essentially the exercise of a discretion by the court. As discussed earlier, the authorities satisfy me that the starting point is foreign residence which I would accept is a trigger point or precondition to the exercise of the jurisdiction conferred by Ord. 29. The same authorities make clear, in my opinion, that foreign residence does not entitle a defendant as of right to an order for security for costs but is a factor to which the court must have regard in its assessment of how its discretion is to be exercised. As indicated earlier, in my view, the impecuniosity of a personal plaintiff resident abroad should be discounted as it is in respect of a plaintiff resident in Ireland.

Clearly, the harm sought to be prevented by a costs security order, is that a defendant would be compelled to defend a claim against a person resident abroad where it would be impossible to recover costs if successful against the plaintiff or where a recovery of costs would be fraught with very substantial difficulty, delay or expense. It necessarily follows, in my view, that the factors which must weigh heavily in the exercise of the court's discretion must be related to the prospect of recovery of costs against the plaintiff in his country of residence.

15. In *Farrell v. Bank of Ireland* [2013] 2 I.L.R.M. 183, the Supreme Court considered an application for security for costs in a very different context from that within which this appeal falls to be decided. The defendant applied for security for the costs of defending a number of appeals taken by an impecunious person who was resident in Ireland. Acceding to the application for security, the Supreme Court held that the plaintiff had conducted her action against the defendant in what it described as a significantly oppressive manner. *Farrell v. Bank of Ireland* was an application for security for the costs of defending an appeal by an individual plaintiff resident in the State. An applicant who seeks security in such circumstances must show that the individual against whom it seeks security has insufficient means to meet those costs: *Midland Bank Ltd v. Crossley-Cooke* [1969] I.R. 56, 61 per Walsh J. That consideration is not a proof in an application for security for costs under R.S.C. Ord. 29, r. 1, which engages a very different issue: whether the applicant for security can enforce – irrespective of the respondent’s financial circumstances – any costs order that it might obtain in the litigation.

16. It is thus no surprise that the judgment of Clarke J. (*nem. diss.*) in *Farrell v. Bank of Ireland* does not contradict the position Ó Néill J. described in *Ditt v. Krohne*. At 196 – 197, Clarke J. concludes that:

...the analysis in which I have just engaged does suggest that an inability or difficulty in recovering costs can give rise to an injustice. If justice required the award of costs in the first place then it follows that a party not actually recovering costs properly awarded must be said to have suffered an injustice.

...

It is that risk that needs to be set against the undoubtedly high constitutional value that is attributed ... to the right of all litigants to fair process in the conduct of proceedings. In attempting to strike a balance the court is required to act in a proportionate way.

Against that background it seems to me that the jurisprudence in relation to all of the areas where security for costs is considered (...) starts from a default position that, in the absence of some significant countervailing factor, the balance of justice will require that no security be given. The reasoning behind that view is that, if it were otherwise, all impecunious parties might, in substance, be shut out from bringing cases or pursuing appeals. Such a balance would be untenable and disproportionate. It is for that reason that there must be some additional factor at play before an order for security for costs can be made.

...

... the jurisprudence suggests that the High Court will not order security against an individual plaintiff unless that plaintiff is out of the jurisdiction The rationale behind that jurisprudence is that a plaintiff, though impecunious, must be entitled to bring and pursue a case. The awarding of security for costs against plaintiffs from outside the relevant area is based on the difficulty of recovering costs where the plaintiff is not readily amenable to the process of the Irish courts or other courts which, ..., give a high level of recognition to orders (including cost orders) of the Irish courts.

17. In the light of these judgments, Delany & McGrath, in *Civil Procedure*, 5th ed. (Round Hall, 2023), observe, at para. 13.04, that:

The principles that apply in relation to individual plaintiffs have traditionally been based on the assumption that it may be difficult or even impossible to recover costs against a party who resides outside the jurisdiction. This basic assumption had to be reassessed in the light of EU law and it is now clear that security for costs will not be ordered against an individual plaintiff who is a national of and resident in another member state of the European Union in the absence of very cogent evidence of substantial difficulty in enforcing a judgment.

18. The authors also state at para. 13.30 that:

In order to obtain an order for security for costs, the key issues are whether the defendant can establish that the plaintiff is resident out of the jurisdiction and the EU and that he has a defence on the merits. So, the court's focus will be on the plaintiff's place of residence and whether this will give rise to difficulties in relation to enforcement rather than on whether the plaintiff is impecunious. In his judgment in the decision of the Supreme Court in Farrell v. Bank of Ireland, Clarke J. stated that the rationale behind the jurisprudence supporting the position that a court will not order security against an individual plaintiff unless he resides out of the jurisdiction or the EU "is that a plaintiff, though impecunious, must be entitled to bring and pursue a case."

V. Conclusions

19. I attempt to summarise the relevant authorities and commentary on applications for security for costs under R.S.C. Ord. 29, r. 1, in the following six propositions:

- Absent the presence of a significant countervailing factor, the balance of justice usually requires the Courts not to order security for costs.
- That approach is based upon the consideration that to do otherwise might effectively deprive all impecunious persons of the entitlement to the benefit of fair procedures before the Courts.
- The exercise of the jurisdiction to order security for costs thus focuses upon the issue as to whether a party that succeeds in litigation will be in a position to enforce any costs order that it might obtain. That will usually not require a court to investigate the means of that other party.
- The impossibility, or substantially increased difficulty or expense, of enforcing a costs order against an applicant, as

compared to the enforcement of such an order against an applicant who resides in Ireland, an EU Member State or a State party to the Lugano Convention, or who has sufficient assets in one of those jurisdictions as would satisfy such an order, is a significant countervailing factor that a Court asked to exercise its discretion under R.S.C. Ord. 29, r. 1 must take into account.

- That significant countervailing factor will usually justify making an order for security absent the presence of other considerations, not limited to the nature of the claim advanced, the conduct of the litigation and the moving party's responsibility for an asserted inability to provide security.
- A person's impecuniosity for reasons beyond the influence of one of the parties will not displace the significant countervailing factor of difficulty in enforcing a costs order, for the reason that just as the impecuniosity of a party who resides in an EU Member/Lugano Convention State will not justify making an order for security for costs, the impecuniosity of a person who resides outside one of those States is equally irrelevant.

20. In the light of this summary, the assessment of the application for security for costs conducted in the judgment under appeal suffers from three significant infirmities. First, it appears to have taken account of irrelevant factors, unsupported by any evidence, as regards a possible increase in the length of time to process visa applications and an alleged deterioration in the quality of decisions made in that context. Second, the High Court's analysis gave insufficient weight to the prospect that the appellant would not recover costs from the respondent in the event he successfully defended the application. Third, notwithstanding its irrelevance to

the analysis that the law required it undertake, the decisive factor in the assessment was the respondent's asserted impecuniosity, which grounded the conclusion that "*the consequence of an order for security for costs is that the claim will not proceed and in effect be terminated without any adjudication on the merits*".

21. The judgment under appeal concluded the application would be 'stifled' were it to order the security the appellant sought. It may be observed that such 'stifling' as the High Court identified arises from the application of the rules of court: *Farrell v. Bank of Ireland* [2013] 2 I.L.R.M. 183, 193-194 per Clarke J. The reason the High Court concluded the application would be stifled was because the respondent did not have the means to provide that security. The respondent's impecuniosity was thus the reason to refuse the application. To refuse an application for security for costs on the ground that the underlying proceedings will be stifled due to a party's material inability to furnish it equates to a finding that the application was refused by reason of that party's impecuniosity. The High Court's reasoning is thus grounded upon the notion that a court hearing an application under R.S.C. Ord. 29, r. 1 is obliged to consider whether making that order would have the effect of stifling, or preventing, the underlying claim from proceeding and, if it is of that opinion, decline to accede to it. If accepted in the context of applications under R.S.C. Ord. 29, r. 1, that reasoning would have the perverse outcome of obliging persons resident outside of an EU Member State/Lugano Contracting State who had the wherewithal to discharge a costs order to give security for costs whilst absolving persons who were unable to meet those costs from providing such security. Neither the case-law reviewed at Pt IV,

nor the principles extracted therefrom identified at para. 19, above, provide any support for that proposition.

22. By reference to Pts IV and V, above, I conclude that the approach the High Court adopted in determining the application for security for costs was incorrect in law. I would consequently allow the appeal and discharge the judgment and order of the High Court.

23. Applying the summary of the law at para. 19 to the facts set out at para. 5, above, I also conclude the Court should make an order under R.S.C. Ord. 29, r. 1 to direct the respondent to provide security to the appellant for the costs of defending the application for judicial review.

24. The inter-partes correspondence described at para. 4, above, shows that the respondent's solicitors did not dispute the National Treasury Management Agency's estimate of the total costs of defending the application for judicial review on a party and party basis. In those circumstances, it is reasonable that the amount of security is fixed at €6,667.00.

25. Given the nature of these proceedings and the requirement that they be determined expeditiously, the respondent has a period of three months from the date of the delivery of this judgment to furnish the appellant with that sum by way of security. In the event that deadline is not met, the appellant will have liberty to bring a motion to have the appeal dismissed for that reason.

26. The default position under s. 169(1) of the Legal Services Regulation Act 2015 and R.S.C. Ord. 99, r. 2 is that costs are to

follow the event and that a Court should determine the costs of interlocutory applications at the time it rules upon them. The appellant having succeeded in his appeal from the judgment and order of the High Court to refuse the relief sought in the Notice of Motion, I am of the provisional view that he is entitled to an order for all of the costs of that proceeding, to include any reserved costs.

27. Should the parties wish to make any submissions as to the content or form of the orders proposed they should contact the Office no later than seven days from the date of the delivery of this judgment. Should it be necessary, the Court will convene a short hearing to hear those submissions and thereafter make such determinations as it deems fit.

28. Since this judgment is delivered electronically, I am authorised by the President and Meenan J. to state that they agree with it and with the orders proposed herein.

Appearances:

For the Appellant: David Conlan Smyth SC and Alexander Caffrey,
instructed by the Chief State Solicitor

For the Respondent: Colm O'Dwyer SC and Gavin Keogh, instructed by
IMK Law Solicitors