



THE HIGH COURT

[2026] IEHC 497

Record No. 2025/26P

Between:-

BRENDAN KEANE

Plaintiff

-and-

COLIN CLARKE

Defendant

Ex Tempore Judgment of Mr. Justice Oisín Quinn delivered on 17 July, 2026

I. INTRODUCTION

1. The defendant asks the court to dismiss these proceedings on three grounds:
 - (i) pursuant to Order 19 rule 28 of the RSC on the grounds that the proceedings are bound to fail and/or are frivolous and vexatious;
 - (ii) that they constitute an abuse of process; and
 - (iii) that they raise issues that are either *res judicata* and/or are covered by the rule in *Henderson v Henderson*.
2. In addition the defendant seeks a legal restraint order (“LRO”) against the plaintiff, on the grounds that these proceedings are vexatious and that the plaintiff has commenced several other complaints or proceedings against the defendant.

II. BACKGROUND

3. The background to these proceedings emerges from a Circuit Court action between Peadar and Jimí Mac Fhlannchadha and Mr. Keane arising from alleged defamatory

publications. Those proceedings were commenced in 2020 and were heard over six days in the Circuit Court by President Kelly. In the judgment delivered on 19 September 2025 the Mac Fhlannchadhas were successful. Peadar Mac Fhlannchadha was awarded €20,000 for compensatory damages for defamation together with €5000 for aggravated damages. Jimí Mac Fhlannchadha was awarded €15,000 for compensatory damages together with €5,000 for aggravated damages. In addition orders were made prohibiting certain matters to be republished and prohibiting Mr. Keane from *inter alia* approaching, intimidating, threatening or disturbing the Mac Fhlannchadhas in any way. An order was also made requiring Mr. Keane to remove the publications complained of. Finally Mr. Keane's counterclaim was dismissed and costs were then awarded against Mr. Keane.

4. Mr. Clarke, the defendant in these proceedings was the solicitor acting for the Mac Fhlannchadhas in the Circuit Court action.
5. Mr. Keane has appealed the decision of the Circuit Court and has commenced judicial review proceedings in respect of the Circuit Court proceedings against a significant number of respondents.
6. These proceedings were commenced in January 2025 and Mr. Clarke's motion to dismiss this action was issued in November 2025. Thereafter Mr. Keane brought a motion seeking to amend his proceedings and the two motions were listed before this court on Thursday 16 July 2026.
7. The defendant took a pragmatic attitude to Mr. Keane's motion to amend his proceedings and did not oppose it. Having heard that application I made an order granting Mr. Keane liberty to amend his proceedings in terms of the proposed draft amended plenary summons and statement of claim.
8. Mr. Keane represented himself and prepared his own pleadings. The statement of claim runs to 121 paragraphs and the plenary summons runs to 36 paragraphs. During the course of the hearing of both motions the court endeavoured to get a better understanding of the claim being made by Mr. Keane.

III. THE NATURE OF MR. KEANE'S PROCEEDINGS

9. In summary Mr. Keane's claim against Mr. Clarke appears to have the following core elements:

(a) *Issues to do with the translated form of the Civil Bill*

(i) Mr. Keane claims that Mr. Clarke wrongly delayed providing him with an English translation of the Mac Fhlannchadhas' Civil Bill, the Civil Bill had been issued in Irish, and Mr. Keane is not a fluent Irish speaker. He said he had not received any translation of the civil bill until September 2022, the proceedings having issued in 2020;

(ii) next, he claimed that this was wrongful and that this was done by the defendant as solicitor for the Mac Fhlannchadhas and he complained generally that this caused delay and expense in his defence of the Mac Fhlannchadhas' claim;

(iii) next, Mr. Keane claims that the translated document was not accurate and contained essentially exaggerated descriptions of the claims being made against him by the Mac Fhlannchadhas. He said in submissions that this caused him to focus on those aspects of the case more than he should have or otherwise would have;

(iv) next, he claimed that Mr. Clarke misled him by indicating that this translation had been carried out by the Courts Service and he says that this was not true. He says that the Circuit Court and the High Court and the Supreme Court were misled by Mr. Clarke into believing that the Courts Service had carried out this translation of the Civil Bill and that this had a bearing on the handling of a motion brought by him to dismiss the Mac Fhlannchadhas' claim;

(v) next, he says that he was provided with a second version of the translated Civil Bill in August 2023 with different wording and phrases. However he complains that he was wrongly told by Mr. Clarke that this translation was also performed by the Courts Service;

(vi) finally, he then says that it was only revealed in October 2024 that in fact Mr. Clarke had arranged for the translation of the Civil Bill, not the Courts Service; and

(vii) Mr. Keane characterises these events as being unlawful and “fraudulent” and he claims that Mr. Clarke was guilty of perjury in relation to these matters and Mr. Keane described this conduct as an “instrument of oppression”;

(viii) He said that the failure to disclose to him that the translation had not been provided by the Courts Service had deprived him of an opportunity to apply to have the case dismissed on the basis that there was a legal obligation, he claimed, on the Mac

Fhlannchadhas to provide him with a ‘Courts Service translation’ of their Circuit Court proceedings.

(b) *Issues around discovery in the Circuit Court case*

Mr. Keane had a separate set of complaints against Mr. Clarke concerning the handling of discovery. In that regard he complained that Mr. Clarke was in breach of his duties as a solicitor (to the court and to “your opponent”) in the manner in which he handled the discovery application being made by Mr. Keane against the Mac Fhlannchadhas for CCTV footage of some of the events complained of in the Mac Fhlannchadhas proceedings. Mr. Keane described this complaint as one involving “suppression of evidence” and “conspiracy to defraud”.

(c) *The description of Mr. Clarke’s solicitors firm*

Finally, Mr. Keane had another set of complaints against Mr. Clarke relating to the description of Mr. Clarke's firm of solicitors in the Mac Fhlannchadhas proceedings. Here, his focus seemed to be on the fact that he says the name of the firm on record was “Sean O’Cearbhail” (which he said had nothing to do with Mr. Clarke) and he also had a complaint at the use of the phrase “and Co.” attached to that name.

10. Mr. Keane accepted he had got a proper translation of the Civil Bill in English by August 2023, which was well in advance of the Circuit Court trial in 2025 and he has in any event appealed that decision of the Circuit Court to the High Court where he will be entitled to a full rehearing of the matter.
11. When asked about the purpose of these proceedings, he explained that he wanted the High Court to carry out a “fact finding exercise” in relation to these matters. He said that in a general way this issue (about getting a proper translated version of the Civil Bill) consumed a great deal of his time and his energy and meant that his concerns about the discovery being made by the Mac Fhlannchadhas became somewhat secondary, all to his general detriment. He said he was seeking declarations and damages as described in his amended pleadings.

IV. RELEVANT LEGAL PRINCIPLES

12. Order 19, rule 28 of the RSC as amended allows the court to dismiss an action. The rule provides as follows:

“(1) The Court may, on an application by motion on notice, strike out any claim or part of a claim which:

- (i) discloses no reasonable cause of action, or*
- (ii) amounts to an abuse of the process of the Court, or*
- (iii) is bound to fail, or*
- (iv) has no reasonable chance of succeeding.*

(2) The Court may, on an application by motion on notice, strike out any defence or part of a defence which:

- (i) discloses no reasonable defence to the action, or*
- (ii) amounts to an abuse of the process of the Court, or*
- (iii) is bound to fail, or*
- (iv) has no reasonable chance of succeeding.*

(3) The Court may, in considering an application under sub-rule (1) or (2), have regard to the pleadings and, if appropriate, to evidence in any affidavit filed in support of, or in opposition to, the application.”

13. The previous version of Order 19, rule 28 was amended in September 2023 to incorporate, in substance, what had previously been the Court's inherent jurisdiction.
14. This more general jurisdiction is described by MacMenamin J in his judgment in *Tracey v Burton* [2016] IESC 16 in the following terms at para. 47:

“a court is entitled to generally have regard to the manner in which proceedings are conducted. While the jurisdiction to strike out proceedings for abuse of process, in one form or another, is to be exercised sparingly, it is a sanction which cannot be ignored. Similarly, while parties have a right to defend proceedings, it may be necessary to identify the manner in which defendants’ rights are best vindicated. A court may, under the Constitution, take whatever proportionate steps are necessary to protect the integrity of its own processes and procedures, and the inherent right of courts, themselves, to manage their own procedures in a manner which balances the rights of litigants with the rights of the public, and other litigants.”

15. In addition, the defendant relied on the doctrine of *res judicata* and the rule in *Henderson v Henderson*.
16. The public policy underpinning the doctrine of *res judicata* is that a party should not be allowed to re-litigate matters that have already been determined by a final judgment of a court of competent jurisdiction.

17. The principle accordingly serves the interests of finality in litigation and the proper administration of justice; see Costello J. in *Morrissey v IBRC* [2015] IEHC 200. In *Morrissey*, at para. 5 *et seq.* in particular, Costello J. (as she then was) sets out a very clear statement of the principles and policies that underpin this doctrine and the related jurisdiction of the courts to restrain an abuse of process.
18. In summary, the jurisprudence indicates that a party alleging a *res judicata* must demonstrate four matters, that:
- (i) the earlier judgment has been given by a court of competent jurisdiction;
 - (ii) the earlier judgment constitutes a final decision on the merits;
 - (iii) the earlier judgment has determined a question which is now raised in the new proceedings (the “same issues” requirement); and
 - (iv) the parties to the litigation must be the same as the parties to the earlier proceedings or be their “privies” (the “same parties” requirement).
- See *Delaney & McGrath on Civil Procedure*, 5th Edition, 2023 at para. 16-88.
19. The defendant bears the burden of proof.
20. While the doctrine of *res judicata* applies to a matter decided in an earlier case and now raised again, the court must also have regard to the rule in *Henderson v Henderson* which extends the doctrine so that it may apply to matters that were not raised in earlier proceedings where they could and should have been raised; see *Henderson v Henderson* (1843) 3 HARE 100.
21. The principles relating to the court’s inherent jurisdiction are well described in the 5th Edition of *Delaney & McGrath on Civil Procedure*, from para.s 16-59 to 16-62 in particular.
22. There is further very helpful description of the principles on applications to dismiss proceedings as being frivolous, vexatious and bound to fail in the Court of Appeal decision of *Scotchstone v Ireland* [2022] IECA 23 at para. 90 and in para. 268 in particular.

23. Finally, the position in relation to LROs or *Isaac Wunder* orders has been most recently set out by the Supreme Court in *M. v M.* [2026] IESC 2. There is also a recent High Court Practise dealing with LROs, see HC PD 135.

V. DISCUSSION

Res Judicata / the rule in Henderson v Henderson

24. The primary basis for the defendant's application as set out in his grounding affidavits was that Mr. Keane had previously raised these issues during the Circuit Court proceedings and, it was contended, these issues had been decided against Mr. Keane.
25. A close examination of the decisions made previously in the context of the Circuit Court case however does not bear this assertion out.
26. Firstly, when Mr. Keane brought a motion to dismiss the Mac Fhlannchadhas claim over the failure to provide Mr. Keane with a proper translation of the Civil Bill the Circuit Court judge's decision as reflected in the DAR transcript of 20 December 2022 indicates that the reason given was that "*it's a matter which can be raised at the trial but is not grounds for dismissing the plaintiffs [the Mac Fhlannchadhas] claim at this juncture*".
27. That decision fails the requirements for *res judicata* on at least two grounds. Firstly, it was not a final decision of the issue now raised (as described above) on the merits. This was an interlocutory decision that explicitly left the issue over to the trial. Secondly, this hearing was on an issue between the Mac Fhlannchadhas and Mr. Keane, not between Mr. Keane and Mr. Clarke.
28. Similarly, in so far as can be ascertained a similar problem arises in respect of the High Court decision on appeal in relation to this issue. The High Court judge, according to the DAR of 10 July 2023, refused the appeal stating, "*I am satisfied that you have received a translated version of the civil bill and that you understand the case that's made against you*". However, that was an interlocutory decision in proceedings between the Mac Fhlannchadhas and Mr. Keane, not between Mr. Keane and Mr. Clarke and does not reflect a consideration of the issues now raised by Mr. Keane.
29. Mr. Keane's complaint against Mr. Clarke is different (as described above) and he says he only received the final version of the translated Civil Bill in August 2023 (after the

High Court decision) and says that he did not learn that the translation had been carried out by or on behalf of Mr. Clarke (and not the Courts Service) until October 2024.

30. Accordingly, I am not satisfied that it can be said that he “could and should” have raised the issues now raised by him in those applications. In other words the defendant has not established that the rule in *Henderson v Henderson* should be applied to this situation.
31. For these reasons, the two Supreme Court decisions would not seem to support a *res judicata* or application of the rule in *Henderson v Henderson* either. These decisions [2024] IESCDET 81 of 1 July 2024 and the subsequent ruling of 10 October 2024 addressed an application by Mr. Keane to appeal the decision of the High Court referred to above and the determination and subsequent ruling explain why leave to appeal is refused. Accordingly, those decisions are not decisions “on the merits” in the sense meant by the doctrine of *res judicata* or the rule in *Henderson v Henderson*.
32. Turning finally to the decision of the Circuit Court trial judge. While it was asserted that this decision did dispose of these issues, a close examination of the very detailed and comprehensive judgment of Kelly P. does not demonstrate that the issues raised in this case were decided (even allowing for the point that there are different parties). The high point of this submission was to refer to para. 120 of the judgment where the trial judge says: “He [Mr. Keane] repeatedly attempted to relitigate matters on which the Court had ruled. Examples include ... the issue of the two Irish translations of the civil bill”. This, however, appears to refer back to the previous interlocutory rulings and accordingly does not meet the requirements of either the doctrine of *res judicata* or the rule in *Henderson v Henderson*.

Whether the Plaintiff’s pleadings disclose no cause of action

33. The defendant did not seriously push the application that Mr. Keane’s proceedings should be struck out as disclosing no cause of action on the face of the pleadings. The bar is high in that context and the matters as pleaded have to be assumed as being proved at the trial.
34. While the argument was advanced that Mr. Clarke did not owe any duty of care to Mr. Keane since he was simply the solicitor for the Mac Fhlannchadhas, it is the case, as Mr. Keane pointed out, that a solicitor can owe certain duties to “your opponent” as

described in *Law Society v Walker* [2006] IEHC 387, Finnegan P. at para.s 35 to 37 in particular.

35. While it might be debatable as to whether, even on the facts as alleged here, there was any breach of a duty or loss caused to Mr. Keane, that is not the sort of detailed examination of the case or the law that should be taken on in the context of a motion such as this.

Abuse of process

36. The jurisdiction does allow the court to assess the underlying facts and nonetheless dismiss the case as an abuse of process in circumstances outlined in the authorities and *Delaney & McGrath* above.
37. Counsel for Mr. Clarke largely pushed the application under this heading. However, in this case Mr. Clarke in his two affidavits did not engage at all in the specifics of the allegations made, other than to provide a general denial and assert that the allegations had all been dealt with by previous rulings. Given the burden rests on the defendant in an application of this nature, I do not think the court has been provided with a sufficient evidential basis to conclude that the proceedings constitute an abuse of process.
38. In the context of an application which invites the Court to examine the factual basis of the proceedings and dismiss them as an abuse of process, it is generally to be expected that the defendant will engage with the substance of the allegations relied upon rather than merely deny them and contend that they have already been disposed of.
39. While some of the claims seem odd and quixotic (and a serious distraction from the underlying dispute with the Mac Fhlannchadhas in respect of which Mr. Keane has a full rehearing pending that he would be far better focusing on) and while it is not clear what tangible benefit Mr. Keane can hope to obtain, it is not sufficiently clear for the purposes of this jurisdiction that if his allegations are proved that he could have no entitlement to a remedy against Mr. Clarke.
40. In those circumstances I do not think it would be appropriate to make an *Isaac Wunder*-type order against Mr. Keane.

VI. CONCLUSION AND FORM OF ORDER

41. I am conscious that aspects of Mr. Keane's claim appear unusual and may ultimately prove unsustainable. However, that is not the question presently before the Court. The question is whether Mr. Clarke has established, on the material before me, that the proceedings are bound to fail or constitute an abuse of process. I am not satisfied that he has done so.
42. Consequently, I propose to refuse the application to dismiss the proceedings and I will set a timetable for the delivery of the amended pleadings and hear from the parties as to costs.