



THE COURT OF APPEAL

Allen J

O'Moore J

McDonald J

Court of Appeal Record No: 2025/112

High Court Record No: 2024/882 JR

Neutral Citation Number [2026] IECA 155

Between/

Kerrigan Sheanon Newman Unlimited Company

Appellant

-and-

Sustainable Energy Authority of Ireland

Respondent

-and-

Abtran Unlimited Company

Notice Party

Ruling of Mr Justice Brian O'Moore delivered on the 30th day of July 2026

1. In the substantive appeal, which related to discovery issues, this Court found in favour of the appellant (KSN) on one of the two issues agitated on the appeal; on the other issue, the Court found in favour of the respondent (SEAI).
2. On costs, the provisional view of the Court was that the costs of the application in the High Court and of the appeal should be costs in the cause. In the normal way, the parties were given the opportunity to argue for a different form of order. SEAI sought a different order for costs in respect of the High Court only; with regard to the costs before this Court, SEAI had “no issue with the cost of the Appeal being made costs in the cause ...” though it also suggested that there might be no order for costs made in respect of the appeal. For its part, KSN agreed that the cost of the appeal should be costs in the cause. In light of those submissions, at least as far as the costs of the appeal are concerned, there is no reason to vary the provisional view expressed in my judgment to the effect that the costs of the appeal should be costs in the cause.
3. There remains the question of the costs in the High Court. SEAI had been awarded its costs of the discovery motion by the High Court judge (Twomey J). The award was, however, made in the context of a finding that SEAI had succeeded in respect of category 6(b) of the discovery sought. SEAI failed in that aspect of the appeal before this Court. It is therefore appropriate that, as the trial judge decided costs on the basis of an outcome which was not upheld by this Court, there would be a revisiting of costs order made in the High Court.
4. Both sides have submitted submissions which are detailed and elaborate. In particular, the written submissions on behalf of the SEAI sets out tables breaking down to the nearest minute the time which it is said was spent in the High Court in arguing the category 6(b) issue and the time spent in arguing the

issue relating to access to the confidentiality club. I am not fully convinced that this level of effort is appropriate in connection with a dispute about the costs of what was, after all, a motion for discovery (albeit an important one). As it happens, this detailed analysis has led counsel for SEAI to conclude that:

“SEAI is entitled to at least 73% of its costs in the HC Appeal ...”.

5. Unsurprisingly, the position of KSN is that the original proposed order with regard to the High Court costs (namely that they be costs in the cause) should not be varied.
6. As the original costs order of the High Court was based on the mistaken premise that KSN was not entitled to category 6(b) discovery, it is appropriate to revisit that award. It is the case that SEAI succeeded in most of the issues before the High Court judge. KSN succeeded ultimately on one issue – category 6(b) – and lost on the other issues. Under those circumstances, the appropriate order to make is one which awards the broadly successful party (SEAI) a portion of its costs. It would not be helpful to award one set of costs to SEAI and another to KSN and to have the two assessments of costs set off against each other. The costs of that exercise alone, leaving aside the time and effort involved, should if possible be avoided.
7. Having considered the arguments made by the parties concerning the discovery motion before the High Court and the eventual success or failure of the parties in respect of those issues, I believe that the appropriate order is to award SEAI sixty percent of its costs of the High Court discovery

motion. In broad terms, SEAI was eighty percent successful and twenty percent unsuccessful.

8. As there is no dispute in connection with the costs of this appeal, the costs of the appeal will be costs in the cause. These will include the costs involved in the current dispute about the appropriate final order.
9. Allen and McDonald JJ agree with this ruling.