



THE HIGH COURT

IN THE MATTER OF THE UNFAIR DISMISSALS ACT 1977 – 2007

**AND IN THE MATTER OF AN APPEAL PURSUANT TO THE UNFAIR
DISMISSALS ACT 1977 - 2007**

Record No: 2016/226 CA

Between:

PETER NOWAK

Appellant

-AND-

**PRICEWATERHOUSECOOPERS and
PRICEWATERHOUSECOOPERS SERVICES**

Respondent

JUDGMENT of Mr Justice Rory Mulcahy delivered on 28 September 2026

Introduction

1. This judgment concerns an application to set aside a final order of the High Court dated 24 February 2017 striking out the appellant’s appeal from the Circuit Court (“**the strike out Order**”). For the reasons explained below, the application is without merit and is accordingly refused.

Background

2. In 2006 the appellant (“**Mr Nowak**”) and the second respondent (“**PWC**”) entered a contract of employment. In 2009, Mr Nowak was dismissed by PWC on the grounds that he had failed, despite repeated attempts, to pass exams set by the Institute of Chartered Accountants of Ireland (**ICAI**). Mr Nowak lodged a claim with the Employment Appeals Tribunal (**EAT**) alleging that he had been unfairly dismissed contrary to the Unfair Dismissals Act 1977, as amended.

3. The EAT concluded that Mr Nowak *had* been unfairly dismissed and awarded him the sum of €7,500.

4. Mr Nowak appealed to the Circuit Court. Following a two-day hearing in July 2016, the Circuit Court also concluded that he had been unfairly dismissed and Mr Nowak’s award was increased to €34,000 for the reasons set out in a detailed written judgment of Judge Comerford dated 17 October 2016.

5. Mr Nowak nonetheless appealed to the High Court by lodging a notice of appeal dated 26 October 2016.

6. As appears from that notice, Mr Nowak’s grounds of appeal consisted of a series of questions, for the most part regarding the Circuit Court’s jurisdiction to address the legal status of the examinations conducted by the ICAI.

7. On 6 December 2016, PWC issued a motion seeking to seeking to strike out or stay the notice of appeal or the appeal on the grounds that it was frivolous and vexatious and/or an abuse of process and/or was bound to fail and/or disclosed no reasonable cause of action under the Unfair Dismissals Act 1977 and/or raised issues beyond the jurisdiction of the High Court. The motion invoked both Order 19, rule 28 of the Rules of the Superior Courts (“**the Rules**”) and the inherent jurisdiction of the court.

8. Mr Nowak wrote to PWC’s solicitors in response to this motion by letters dated 16 and 19 January 2017. In his letter of 16 January 2017, Mr Nowak stated that PWC was not entitled to rely on Order 19, rule 28 of the Rules to seek to strike out his appeal as that applied to pleadings in plenary proceedings only, what he referred to as “*common law*”

proceedings” in his submissions on this application. He referred to the definition of pleadings in Order 125, rule 1 of the Rules. His letter indicated that he did not intend to appear at the hearing of the motion:

“Furthermore, I am reluctant to attend hearings of applications that appear to be set up in advance and predetermined by prejudiced, unfair, and biased judges whose knowledge of basic legal principles is questionable, as is their interpretation of it. Most of the time, interpretations of the law (for instance, in my other actions) tend to be contrary to common reasoning and illogical, solely to block my legal actions at every stage of the court system until they reach the final stage. This is a blatant abuse of the court system by judges. I do not propose attending a hearing of such a fraudulent application. I believe investigators from the Garda Fraud Bureau should do so in order to gather evidence for criminal proceedings against some of the officers of the Central Office and judges who allow such breaches of rules to occur.”

9. Mr Nowak’s letter of 19 January 2017 refers to the application as being “void”. In this letter, he stated that he intended to “*appeal an illegal Order made on foot of your client’s void application, if possible to appeal illegal Order, to the Court of Appeal if the outcome of your client’s void application is successful*” (emphasis in original). The appellant asked that the letter be presented to the court.

10. The motion came on for hearing before the High Court (Noonan J) on 24 February 2017. Consistent with his stated intention, Mr Nowak did not attend. The court order refers to the fact that the court had read the two letters of 16 and 19 January 2017 from Mr Nowak. The court made the strike out Order, striking out the notice of appeal and the appeal on the grounds set out in the notice of motion, both pursuant to Order 19, rule 28 of the Rules and the court’s inherent jurisdiction.

11. Mr Nowak was notified of the making of the strike out Order and wrote again to the respondent on 15 March 2017 reiterating his view that the respondent’s application was void and that, therefore, any purported order of the High Court was “*invalid*”. The strike out Order was subsequently perfected on 20 March 2017.

12. Mr Nowak did not, contrary to his letter of 19 January 2017, try to appeal the strike out Order.

13. On 23 October 2019, Mr Nowak wrote to PWC’s solicitors and asked that they transfer the compensation awarded by the Circuit Court “*without the [sic] prejudice to the further developments in relation to the appeal to the High Court and the ongoing legal proceedings against the Data Protection Commission, your client as the notice party and the Courts Service ...*”

14. The reference to other legal proceedings appears to relate to one (or more) of a series of judicial review proceedings commenced by Mr Nowak against the Data Protection Commissioner in 2019. Four separate judicial reviews were commenced in 2019, all of which were struck out with no order on 3 December 2019. I was not provided with any information about these proceedings.

15. In 2022, Mr Nowak issued plenary proceedings against the Courts Service complaining, *inter alia*, about the lawfulness of the Courts Service’s processing of his appeal. The plenary proceedings were dismissed as frivolous and vexatious by the High Court (Nolan J) on 29 July 2025 (see *Nowak v Courts Service* [2025] IEHC 484). The judgment touches on some of the issues raised by this application:

“37. Finally, I am satisfied that the inherent jurisdiction of the court to strike out matters comes into play. It is not for this court to challenge the decision of a judge of equal standing (Noonan J.), in his application of the law when he struck out the matter in February 2017.

38. Of course, all of this could easily have been avoided had Mr Nowak decided to turn up in court and argue what he argued to this court. However, for reasons, which are not properly explained, he alleges the hearing was fraudulent or illegal, which it clearly was not.

39. All of this was some nine years ago. Nonetheless notwithstanding his attempt to litigate these matters, there is no case in law, as against the Central Office. He seems to allege some form of implied or explicit fraud, but here is no evidence of any fraud.

Indeed, if anything there is evidence of independence and a balanced approach of the staff of the Central Office.”

16. Mr Nowak issued the motion the subject of this judgment on 23 January 2026.

17. In his affidavit grounding the motion, Mr Nowak confirms that he was not in attendance in court for the hearing of the application to strike out his appeal. He avers that he attended court on 30 May 2017 before Noonan J “*to question the reasonableness of his order*”. As he explained in oral submissions, 30 May 2017 was the date his appeal had originally been listed. He says that he was forcibly removed from court on that day.

18. In his affidavit he avers that the Central Office violated Order 19 of the Rules by accepting the respondent’s irregular notice of motion and that the strike out Order was made in circumstances “*amounting to fraud*”. As with the plenary proceedings determined by Nolan J, he offers no evidence in support of this allegation of fraud.

The arguments

19. In his written submissions, Mr Nowak identifies various authorities which address the limited circumstances in which a court may re-open or re-visit a final order.

20. In particular, he refers to the judgment in *P v P* [2002] 1 IR 219, [2001] IESC 76 as authority for the proposition that an order may be set aside where “*the judicial proceedings on foot of which an Order is made are gravely flawed by reason of a fundamental breach of fair procedures and justice guaranteed by the Constitution.*” The submissions contend that the present case falls within this category of cases. Despite his reference to fraud in his grounding affidavit, his submissions do not identify fraud as a basis to set aside the strike out Order.

21. His affidavit offers no explanation for his failure to appeal the strike out Order or his delay in seeking to have it set aside. In oral submissions, he indicated that he was challenging the order now because it continued to be relied on against him in other proceedings, an apparent reference to the proceedings the subject of Nolan’s J’s judgment. He contended that he had no right of appeal to the Court of Appeal, because this was an

appeal from the Circuit Court and, therefore, the order of the High Court was final, referencing section 39 of the Courts of Justice Act 1936 to the effect that a decision of the High Court on an appeal from the Circuit Court shall be “*final and conclusive*”. He argued that an application for leave to appeal to the Supreme Court would not have been open to him because *all* determinations from the Supreme Court on applications for leave to appeal are invalid because they are only signed by one judge, not the three judges who make each determination. He identified no basis for his contention that in order for a determination on an application for leave to appeal to be valid the determination must be signed by all three members of the court who made the determination.

22. PWC contends that the exceptional jurisdiction which Mr Nowak invokes is not engaged here. It argues that this application represents an impermissible attempt by Mr Nowak to appeal the strike out Order. It argues that there is no evidence of fraud, no explanation for Mr Nowak’s failure to appear at the hearing of the motion, his failure to appeal, or the delay in seeking to have the Order set aside and that this application is, in all the circumstances, an abuse of process.

Discussion

23. There is no doubt that a jurisdiction exists to re-visit final orders (see, generally, *Re Greendale Developments (No. 3)* [2000] 2 IR 514 and subsequent case law). However, the jurisdiction is wholly exceptional. As explained in *Student Transport Scheme Ltd v Minister for Education and Skills* [2021] IESC 35 (at paragraph 2.13):

“There is, therefore, a clear and consistent line of authority on this topic. A high weight has to be attached to the principle of finality. The reason behind this is clear. Where proceedings have reached an end, the parties are entitled to expect that they will not have to continue to litigate the issues which have been finally determined. However, there may be exceptional circumstances where a failure to reopen may itself amount to a clear and significant breach of the fundamental constitutional rights of a party, going to the very root of fair and constitutional administration of justice, such that the decision sought to be reopened can properly be considered to be a nullity and not merely

arguably in error. Where such a situation arises through no fault of the party concerned, then it follows that the limited jurisdiction to reopen the case can be exercised.”

24. As noted in *G v Director of Public Prosecutions* [2023] IEHC 386 and *Nowak v Intesa Sanpaolo Vita SpA* [2026] IEHC 295, there must be some doubt whether such a jurisdiction exists at all where an unfettered right of appeal is available (see also *P v P* at pp. 231 – 232 of the reported judgment).

25. Although the decision of the High Court to strike out the appeal may have been final and conclusive, by virtue of section 39 of the Courts of Justice Act 1936, it is clear that under the new constitutional architecture introduced by the thirty third Amendment to the Constitution, a right of appeal to the Supreme Court is available from all decisions of the High Court. Mr Nowak’s suggestion that this constitutional entitlement is affected by purported infirmities in the form of determinations on applications for leave to appeal in other cases is obviously without foundation: any suggested infirmity in an order in another case could not affect his constitutional entitlement. Of course, his contention that a Supreme Court determination on any application for leave to appeal is invalid by reason of having not been signed by all members of the deciding court is without merit. There is, simply put, no such requirement.

26. However, even if one assumes for present purposes that a jurisdiction exists to revisit a final order of the High Court on an appeal from the Circuit Court, notwithstanding the constitutional right to seek leave to appeal to the Supreme Court, it is abundantly clear that there is no basis for exercising the jurisdiction in this case.

27. Insofar as Mr Nowak alleges fraud, there is no fraud identified, still less any evidence to support it. A bare allegation of fraud is clearly not sufficient to engage any jurisdiction to re-visit the strike out Order.

28. His legal submissions do not rely on fraud, but rather a “*fundamental breach of fair procedures*”. There has been no breach of fair procedures or denial of justice in this case. Even if Mr Nowak were correct that PWC was not entitled to seek the order striking out his appeal, Mr Nowak had ample opportunity to make that case at the hearing of the motion. It is clear that he was notified that the motion had issued and when it would be listed for

hearing. Not only did he not attend the hearing and advance whatever arguments he wished regarding the validity of the motion, he made a deliberate decision not to attend. He expressed a prior intention to appeal and then did not seek to appeal. Notwithstanding his non-attendance, it is clear from the terms of the strike out Order that the learned High Court judge read both letters which Mr Nowak had sent to PWC's solicitors outlining his objection to the motion.

29. In the circumstances, there was no breach of fair procedures at all, still less one which could trigger the exceptional jurisdiction entitling Mr Nowak to look behind the strike out Order.

30. Even if it were arguable that there had been some breach of fair procedures, Mr Nowak's unexplained delay in seeking the relief he now seeks would be fatal to this application. As noted above, Mr Nowak offered no explanation for his delay in his grounding affidavit. In oral submissions, he simply explained that he had decided that it was now appropriate to seek to set aside the Order because it was being relied on in other proceedings. This seems to be a reference to *Nowak v Courts Service* proceedings the subject of Nolan J's judgment. Having failed in those proceedings, it appears that Mr Nowak wishes to re-animate these ones. Whatever interests of justice may have been served by revisiting the strike out Order just after it was made, there could be no merit in doing so nine years later, after Mr Nowak has pursued and failed in other related litigation.

31. In this regard, an analogy can be drawn with an application to extend time to appeal, since, in effect, this is what Mr Nowak seeks to do here. In *Seniors Money Mortgages (Ireland) DAC v Gately* [2020] 2 IR 441, [2020] IESC 3, the Supreme Court rejected an application to extend time to appeal made a little over a year after the relevant High Court order. The Court (O'Malley J) noted (at §69 of the reported judgment):

“By the same token it seems to me that, given the importance of bringing an appeal in good time — the desirability of finality in litigation, the avoidance of unfair prejudice to the party in whose favour the original ruling was made, and the orderly administration of justice — that the threshold of arguability may rise in accordance with the length of the delay. It would not seem just to allow a litigant to proceed with an appeal, after an inordinate delay, purely on the basis of an arguable or stateable technical ground. Since the objective is to do justice between the parties, long delays

should, in my view, require to be counterbalanced by grounds that go to the justice of the decision sought to be appealed. Not every error causes injustice.”

32. A delay of nine years would require something wholly extraordinary to justify the re-visiting of a final order. In circumstances where the arguments that Mr Nowak wishes to make were apparent to him even before the strike out Order was made and he elected not to attend court and make those arguments at the time, or immediately after the Order was made, it is clear that no interest of justice would be served by entertaining Mr Nowak’s application.

33. In *Board of Management of Wilson’s Hospital v Burke* [2024] IEHC 453, the court (Sanfey J) described a similar application, to set aside a final order a little over a year after it had been made, as falling so far short of the exceptional circumstances threshold as to amount to an “*abuse of process*”. This application warrants the same characterisation.

34. In the circumstances, even if there were merit in Mr Nowak’s underlying complaint about the motion issued by PWC, the court’s decision on that motion has become final and the time has long since passed when any step might be taken to revisit the strike out Order. Mr Nowak has not, in any event, identified any basis upon which the court would carry out such an exercise.

35. In the circumstances, it is not necessary to address Mr Nowak’s arguments regarding the validity of the strike out Order. For completeness, I should say that I do not see any merit in his argument.

36. He complains that PWC was not entitled to issue the motion seeking to strike out his appeal pursuant to Order 19, rule 28, and accordingly, the court was not entitled to make an order under that rule, because it only applies to “*common law proceedings*”. More particularly, he argues that his notice of appeal is not a pleading within the meaning of Order 125, rule 1. In this regard, I should note that although Order 19, rule 28(1) now refers to applications to strike out “*any claim or part of a claim*”, the version of the rule in force when the strike out Order was made refers to applications to strike out “*pleadings*”.

37. Order 125, rule 1 defines certain terms within the Rules. “*Pleading*” is defined as follows:

“pleading” includes an originating summons, statement of claim, defence, counter-claim, reply, petition or answer...

38. As counsel for PWC points out, the definition is not exclusive. Order 61, rule 2 of the Rules provides that an appeal from the Circuit Court shall be commenced “*by the lodgment for issue of a notice of appeal*”. The notice of appeal is, accordingly, the originating document for an appeal required by the Rules.

39. Whether a respondent’s notice (in an appeal from the High Court to the Court of Appeal) is a “pleading” within the meaning of the Rules was considered but not determined by the Court of Appeal (Allen J) in two related judgments, *Dowling v Ireland* [2025] IECA 293 and *Dowling v Ireland* [2026] IECA 1. Allen J expressly declined to determine the issue on the basis that it was not necessary to decide it for the purpose of determining the application before him. Since it is not necessary to decide it here, having regard to my conclusion that the jurisdiction to revisit the strike out Order is not engaged, I respectfully adopt the same course here.

40. In any event, the motion issued by PWC sought relief not only pursuant to Order 19, rule 28, but also pursuant to the inherent jurisdiction of the court. The strike out Order records that the court struck out the appeal pursuant to the court’s inherent jurisdiction. Mr Nowak did not address this aspect of the Order at all. A court must have the power to control its own processes. In those circumstances, I have little doubt that the High Court possesses an inherent jurisdiction to strike out an appeal from the Circuit Court where, for instance, the appeal does not disclose an arguable ground of appeal, or where, as PWC alleged was the case, it seeks to raise issues which are not within the jurisdiction of the court to determine.

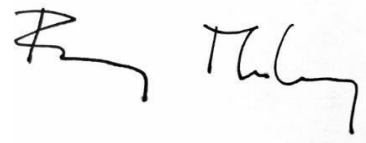
41. In those circumstances, there was no jurisdictional infirmity in the motion issued or the order made at all and, accordingly, no basis for seeking to set aside the strike out Order arises.

42. In all the circumstances, I will refuse Mr Nowak’s application.

Conclusion

43. The application is refused.

44. The respondents having been entirely successful in the application are presumptively entitled to the costs of this motion. If – at the risk of increasing the costs – Mr Nowak wishes to contend for any other costs order, I will allow a period of ten days for him to give notice in writing to the registrar and the respondents' solicitors, in which event the matter can be listed for the hearing of that application.

A handwritten signature in black ink, appearing to be 'R. T. L.' or similar, written in a cursive style.