



THE HIGH COURT

[2026] IEHC 674

[Record No. 2026 222 P]

BETWEEN

MICHELLE KEANE

PLAINTIFF

AND

THE JOURNAL MEDIA LIMITED, TRADING AS THEJOURNAL.IE,

DML CAPTIAL UNLIMITED COMPANY, BRIAN FALLON

AND EAMONN FALLON

DEFENDANTS

COSTS JUDGMENT of Mr Justice Kennedy delivered on 16 October 2026.

1. My 9 September 2026 judgment (the Judgment) refused the plaintiff's injunction application because she did not meet the standard required for the significant reliefs sought. It noted the plaintiff's failure to articulate any basis for suing at least three of the defendants and expressed concern as to the impact of such unnecessary joinder of parties in defamation. It also expressed the provisional view - subject to submissions - that the Defendants were presumptively entitled to an order for the payment of their costs on the standard (party & party) basis. Written submissions were subsequently exchanged in respect of costs and this ruling is directed to that issue.

2. The plaintiff accepted that the application failed and that costs usually follow the event but submitted that the Court should exercise its discretion to make a different

order. She submitted that I should make no order as to costs or direct that the costs be costs in the cause or that any award should be confined to a single set of reasonable party-and-party costs in favour of the first defendant, with no separate award to the other defendants.

3. As the plaintiff noted, O. 99, r. 2(3) of the Rules of the Superior Courts provides for an award of costs on determination of an interlocutory application, save where liability for costs cannot justly be adjudicated on the basis of the application. I consider that costs of the application can be justly adjudicated for reasons evident from the Judgment, but r.2(3) is subject to r. 2(1), which provides that costs are at the Court's discretion.

4. The plaintiff correctly observed that the Judgment resolved the interlocutory application and does not prevent the pursuit of a properly particularised claim against appropriate defendants. However, even if the plaintiff was to succeed at trial, it would not follow that this application had been correctly brought. The Judgment identified no ground upon which the application could have succeeded. In my view, no basis for it to be brought was established. Accordingly, justice demands that she should pay the costs irrespective of the outcome at trial. That is what O. 99, r. 2(3) envisages, unless there is any basis to depart from the normal course pursuant to r. 2(1). No such basis has been identified.

5. The plaintiff cited *Beaumont Hospital Board and Murray v O'Doherty* [2021] IEHC 624, in which Allen J. directed that the costs of a similar application should be costs in the cause on the basis that, when deciding liability for interlocutory costs, the Court may consider whether the issue on which the motion turned may need to be revisited at trial and the trial judge may be better placed to decide responsibility for those costs. However, as the plaintiff acknowledged, the injunction was granted in *O'Doherty*, a significant distinction. The reservation of costs to trial reflected the possibility of an outcome on the merits at trial which would call into question the premise underpinning the order. It does not establish the proposition that all interlocutory costs should be reserved to trial (nor, in

fairness, did the plaintiff make such a submission). In the light of the reasons for the application's dismissal in this case, it does not seem to me that there is any reasonable basis to anticipate that the outcome of the trial – even if the plaintiff was to succeed – should determine the costs of the current application which I have found to have been unjustified. The facts are more analogous to *Lidl Ireland GmbH v Irish Farmers Association* [2021] IEHC 381, in which, as the plaintiff acknowledged, a similar application was refused with costs to the defendants. I agree with her characterisation of that decision as a close authority against her submission. I do not consider that para. 33 of the Judgment or any other circumstances identified by the plaintiff justify a departure from the normal rule.

6. The plaintiff also cited *Daly v An Taoiseach & Ors*; *Murphy v An Taoiseach & Ors* [2026] IEHC 133 in which the High Court awarded unsuccessful applicants 50% of the costs in rare and exceptional circumstances because the proceedings raised issues of public and constitutional importance. However, as the plaintiff accepted, the facts were materially different from these proceedings. She purely relied on *Daly* as an example of the Court exercising its discretion to depart from the ordinary costs outcome in appropriate circumstances. I accept that the Court has such a discretion but I do not see any basis to invoke it in this case.

7. The plaintiff submitted that if the Court was minded to award costs, any award should be limited to one set of reasonable costs for the first defendant, with no separate award to the other defendants. Two grounds were advanced for that proposition. The first was that the Judgment observed that the plaintiff had not articulated a coherent basis for joining any defendants other than the first defendant. The joinder of parties without articulating a coherent basis for doing so is scarcely a reason to refuse those parties the costs they are forced to incur resisting a serious application to which they should not have been joined. If anything, the reverse would be more logical - it could be argued that,

particularly in the context of defamation proceedings, the gratuitous and inappropriate joinder of parties (particularly if pursued to trial without any legitimate basis to do so) might justify an award of costs on the higher scale, if it was considered that the actions constituted an abuse of court procedures designed to intimidate defendants and restrain legitimate publication on matters of public interest. However, such a higher scale would only be appropriate in egregious cases and the defendants, correctly in my view, did not submit that such an award would be appropriate in these proceedings, at this stage at least.

8. As to whether a single set of costs should be awarded, the plaintiff chose to name the defendants as parties to the proceedings and as respondents to the application, putting each of them to the effort and expense of resisting a serious application. They are each entitled to their costs. The fact that they shared a legal team may reduce the aggregate cost incurred by them, but the determination of their reasonable entitlement (on a party and party basis) is a matter to be determined by adjudication unless the parties are able to reach agreement. That process is designed to ensure the reasonableness of the figure awarded.

9. For completeness, I confirm my agreement with the defendants' submissions that, inter alia, they were wholly successful in resisting the application, the reliefs sought were far reaching and would have significantly impacted them. I also agree that the plaintiff has raised no issues of public importance and nor were there special circumstances that would displace the presumption that costs should follow the event.

10. Accordingly, the final order will reflect my dismissal of the application and will award the defendants their costs on a party and party basis.

Representation

Michelle Keane appeared as a litigant in person.

Tom Murphy BL, instructed by RDJ LLP, for the defendants.