

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: **24/9/2014**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

McDaid's (John) Application [2014] NIQB 133

**IN THE MATTER OF AN APPLICATION BY
JOHN McDAID FOR JUDICIAL REVIEW**

HORNER J

[1] In this case John McDaid the appellant seeks to judicially review the decision of Master Kelly on 25 March 2014 whereby, inter alia, she refused to grant the relief sought by the applicant. The applicant has also leave to judicial review the decision of Mr Justice Deeny and I dismissed that because it is clear that it is not open to one High Court Judge to hear a judicial review of the decision of another High Court Judge. The matter was made clear in Re Racal Communications (1980) 3 WLR 181 when Lord Diplock said:

“Mistakes of law made by judges in the High Court acting in their capacity as such can be corrected only by means of an appeal to an appellate court.”

[2] I therefore concluded that I had no jurisdiction and that the application for judicial review of Mr Justice Deeny's decision was doomed to failure.

[3] I then heard arguments in the application to review Master Kelly's decision. Mr McDaid who represented himself, and who presented his case admirably, made it clear that this was not an appeal on the merits. He told the court he was applying because of procedural errors and mistakes only. He complained of numerous irregularities and deficiencies. I have to stress again that judicial review is concerned with the process and not with the merits of any particular decision.

[4] The appellant's claim for leave to judicially review the decision of Master Kelly must fail because it does not succeed in overcoming the modest threshold necessary in judicial review applications for a number of different grounds.

[5] Firstly, I do not consider that this court has jurisdiction to entertain the application for judicial review from the decision of the Master sitting in her capacity as Bankruptcy Master. My reasons are as follows. Master Kelly is a Bankruptcy Master in hearing this case she was exercising the jurisdiction of the High Court in performing her role as the Bankruptcy Master. The High Court as I have said is a superior court of record. She was exercising jurisdiction of the High Court as provided by Article 359 of the Insolvency Order and the Insolvency Rules and I refer to Rules 703 and 742. In Re Rice's Application for Judicial Review (1998) NI Reports 265 the Court of Appeal confirmed that the Taxing Master's decision which he exercised pursuant to Section 28(2) of the Criminal Appeal (Northern Ireland) Act 1980 was not subject to judicial review and I refer in particular to the conclusion of the court judgment at page 274. It is not open to me to challenge the reasoning of the Court of Appeal as a puisne judge.

[6] Secondly, in any event the complaints made by the appellant relate to such matters as mixing up the names of the parties in the Order, failing to provide a reference in accordance with the practice direction and other mistakes and typos which I need not mention in any detail. The appellant accepted that none of these went to the merit but all went to the process. I consider that such mistakes, which it is accepted do not go to the merits of the decision can all be cured and I refer to Rule 7-50 of the Insolvency Rules

[7] Thirdly, he also complains that Master Kelly should have recused herself. His main ground centres on the fact that she dealt with other interlocutory applications in a manner that was not in his favour. I do not consider that this satisfies the test for bias or apparent bias which is whether the fair-minded and informed observer having considered the facts would conclude that there was a possibility that the Tribunal was biased. It cannot be the case that because a Master in doing her job finds against someone that such a decision precludes her in the future from hearing other applications in cases involving the same party.

[8] Fourthly and more importantly there is an alternative remedy. Mr Justice Deeny has decided how these appeals should be managed. The judicial review application, if successful, will subvert his decision as to how this case should be managed. It seems to me that the way forward suggested by Mr Justice Deeny is in fact the best use of court time and accords with the overarching principle in which the High Court conducts its business as set out in Order 1 Rule 1(1)(a).

[9] Finally, one High Court Judge to undermine the decision of another High Court Judge as to how a particular case should be managed. This is not going to happen in the instant case. I want to make it clear and I stress to the appellant he has not been ruled out from complaining about these technical matters in his appeal to Mr Justice Deeny. He will have the opportunity in due course to make them and therefore all the substance of this judicial review can be dealt with and will be dealt with by Mr Justice Deeny on any appeal from the decision of Master Kelly. How

that appeal is managed is a matter entirely for Mr Justice Deeny and is not a matter for this court to intervene whether at this stage or at all.

[10] For all those reasons I refuse both applications for leave and I want to make it clear and stress again that all the arguments that have been addressed to me by the appellant remain open to him. However these will require to be addressed in the proceedings as managed by Deeny J.