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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY ANTHONY PARKER FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

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KEEGAN J

[1] This is an application brought by Mr Anthony Parker for leave to apply for judicial review. The judicial review relates to a decision made on 3 July 2019 to refuse to enter judgment in a civil case in default of appearance under Order 13 of the Rules of the Court of Judicature (Northern Ireland) 1980. The focus is on Order 13 Rule 1. The application is therefore directed against a Master of the High Court Queen's Bench Division, Master McCorry. I issued two case management directions in this case prior to the hearing of the leave application.

[2] At the outset, I record that received numerous correspondence from the applicant requiring me to hear this case in private in Chambers and immediately grant the relief sought, i.e. a mandatory order for default judgment in the applicant's civil claim. I informed the applicant through the judicial review office that I did not intend to hear him in my Chambers without the proposed respondent present and that he could attend today to make whatever representations he wished. I decided that the case should be heard in open court with both parties having an opportunity to make submissions to me.

[3] The applicant did attend this morning and presented before me in a rather confrontational way. He, when called, attended with another gentleman who was unidentified to me and who appeared to be giving some instruction to the applicant. I pause to observe that the applicant, whilst a litigant in person, has not asked for a McKenzie Friend or anything of that nature. The applicant when addressed by me pointed out that the title of the proceedings was incorrect as the clerk had read out, "In the Matter of an application by Anthony Parker." Then, when I asked the

applicant did he want to make any oral representations to me he stated that leave had already been granted administratively and also that Mr Sands BL (counsel for the proposed respondent) had no jurisdiction to act. It was difficult to obtain any more information from the applicant. I invited him to make further oral submissions if he wished or I said that he could rely on his written submissions. The applicant did not give me a straight answer and he left the court with the gentleman who was with him. I have been told by the clerk, that he is attending some other case today in the High Court, not his own case. In any event the applicant has clearly chosen to disengage and as I have said when he did appear briefly he behaved in a confrontational and disrespectful manner towards this court. I have therefore proceeded on the basis of the written evidence the applicant submitted in support of his application. I also heard briefly from Mr Sands. I pause to observe that the judicial review court is a busy court and time is afforded to all manner of litigants to make their cases. However, a concept that Mr Parker raises in his submissions is the rule of law. That underpins our justice system. In other words the rule of law applies to everyone and no one is above the law in terms of how cases are presented and determined in these courts.

[4] Turning to the case itself the applicant, challenges a decision of the Master which is really by way of direction comprised in a number of emails sent to the applicant. This is in the context of a writ issued by the applicant which is No: 2016/56141, it was issued by him as a plaintiff in the name of I, a man Anthony, described as a prosecutor against defendants referred to as Constable D Hegarty, male, arresting Sergeant Constable DOE and male custody Sergeant DOE. They are described on the face of the writ as care of Chief Constable George Hamilton, Brooklyn House, 65 Knock Road, Belfast. The writ is date stamped 24 June 2016. Notwithstanding some obvious procedural issues in terms of the form of this a memorandum of appearance was entered on behalf of Constable Hegarty by the Crown Solicitor's Office on 14 February 2017. It is signed by the Crown Solicitor and bears the stamp of the High Court on the same date.

[5] The crux of the applicant's challenge is that there are a number of defects within the memorandum of appearance specifically that it is one page whereas it should be two pages, there is no affidavit of service, there is no evidence of agency and/or power of attorney filed with the court to prove that the Crown Solicitor had authority to act and that the Crown Solicitor is now officially on record. Contained within the papers is evidence that the applicant sought judgment without trial in the sum of £47,191.68 damages before the Master. He made an application for summary judgment pursuant to Order 13. This application was rejected by correspondence from the court office recorded in an email of 3 July 2019 from an official Ms McQuillan, who said in an email:

> "Please note I spoke to the Master's staff today, please be advised that the Master has directed this is not a matter in which a default judgment can be obtained in order to

> progress your case. Please can you issue a summons and affidavit?"

[6] I have read the applicant's ensuing correspondence and it appears from that that he did not agree with that assessment and he did not file a summons and affidavit. The applicant clearly maintains that the Master was acting unlawfully in not granting him the default judgment and so he asks me to grant a mandatory order for default judgment in the civil proceedings. In this judicial review the applicant has advanced a number of grounds of challenge which I summarise as follows:

(a) He challenges the decision of the Master on the basis of his rights under the 1949 Geneva Convention.

(b) Procedural unfairness.

(c) That the decision was ultra vires.

(d) That the Master has limited jurisdiction.

(e) That he acted in bad faith.

(f) That he acted irrationally or in breach of the Wednesbury unreasonableness rule.

[7] Mr Sands has raised some procedural issues namely the requirement under Order 53 to provide in judicial review an affidavit supporting the facts relied on. He also raised other difficulties with the pleadings which offend the judicial review practice in this jurisdiction. I bear all of that in mind and it is a great concern to me however given that the applicant is a litigant in person I am not going to dismiss the case simply on the basis of these procedural deficits. Rather, Mr Sands makes two more fundamental points. First, a decision of the Master of the High Court is not ordinarily amenable to judicial review. In this regard he relies on Order 32 Rule 11(1) which provides that:

> "A Master shall power to transact all business and exercise all such jurisdiction as may be transacted and exercised by a judge in Chambers."

[8] Mr Sands pointed out that none of the statutory exceptions are applicable in this case. Mr Sands also referred me to a decision of Mr Justice Horner in *Re McDaid's Application* which is reported at [2014] NIQB 133. In that decision, which was a judicial review against the bankruptcy Master, the judge said that the Master was acting as an officer of the Court of Judicature and exercising the jurisdiction of the High Court as such a decision is not amenable to judicial review. This is established authority and as such the applicant's challenge fails on a jurisdictional basis.

[9] In any event it also seems to me that the applicant had and potentially still has an alternative remedy (although he may have to apply for an extension of time) pursuant to Order 58 Rule 1 of the Rules of the Court of Judicature (Northern Ireland) 1980 which provides

> "Except as provided by Rules 2 and 3 an appeal shall lie to a judge in Chambers from any judgment, order or decision of a Master."

[10] An appeal to the High Court is by way of re-hearing so there would be a review of any decision of the Master on the merits before the High Court. The one point I raised in the course of my exchange with Mr Sands was that I could not discern that there was an order from Master McCorry. It seemed to me that he has issued a procedural decision by way of email and that may lead to a request for a formal order or decision or it may lead to an appeal on the basis of the email but either way an alternative course is open to the applicant before the Queen's Bench Master and/or the High Court on appeal.

[11] While Mr Sands raised the merits of the decision of the Master, I am not going to adjudicate on these proceedings because it seems to me that this judicial review has two fundamental difficulties, namely jurisdiction and alternative remedy which I do not consider can be overcome. This is a leave hearing and I bear in mind that the test for leave is whether or not there is an arguable case with a reasonable prospect of success. The applicant chose not to make further oral submissions to me. However, as I have said I have considered all of the written material filed in this case.

[12] Subsequent to the hearing on 11 December the applicant sent correspondence to the court dated 20th December. In that, the applicant apologised for his behaviour in court. I welcome that acknowledgment. The applicant also repeated his request for judicial review. There is nothing new raised in the correspondence and so in all of the circumstances I find that the applicant has not established an arguable case for judicial review. The applicant may pursue his claims before the Master and on appeal as I have said.

[13] Accordingly, I will dismiss this application.