



**THE SUPREME COURT  
DETERMINATION**

**IN THE MATTER OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN ACT 2017**

**BETWEEN**

**FLAVIO JR SUAREZ**

**APPLICANT**

**AND**

**FINANCIAL SERVICES OMBUDSMAN**

**RESPONDENT**

**Neutral Citation: [2022] IESCDT 74**

**Supreme Court Record No.: S:AP:IE:2022:000038**

**Court of Appeal Record No.: N/A**

**High Court Record No.: 2021 No. 1 MCA**

**Date of Determination: Thursday, 9th June, 2022.**

**Composition of Court: MacMenamin J., O'Malley J., Woulfe J.**

**Status: Approved**

**APPLICATION FOR LEAVE TO APPEAL TO WHICH ARTICLE 34.5.4° OF THE  
CONSTITUTION APPLIES**

**RESULT:** The Court does not grant leave to the Applicant to appeal to this Court from the High Court.

<b>ORDER SOUGHT TO BE APPEALED</b>
<b>COURT: HIGH COURT</b>
<b>DATE OF JUDGMENT OR RULING: 8TH FEBRUARY 2022</b>
<b>DATE OF ORDER: 29TH MARCH 2022</b>
<b>DATE OF PERFECTION OF ORDER: 29TH MARCH 2022</b>
<b>THE APPLICATION FOR LEAVE TO APPEAL WAS MADE ON 30TH MARCH AND WAS IN TIME.</b>

**REASONS GIVEN:**

**General Considerations**

1. The general principles applied by this court in determining whether to grant or refuse leave to appeal, having regard to the criteria incorporated into the Constitution as a result of the Thirty-third Amendment, have now been considered in a large number of determinations and are fully addressed in both a determination issued by a panel consisting of all of the members of this court in *B.S. v. Director of Public Prosecutions* [2017] IESCDT 134 (Unreported, Supreme Court, 6 December 2017), and in a unanimous judgment of a full court delivered by O'Donnell J. in *Quinn Insurance Ltd. v. PricewaterhouseCoopers* [2017] IESC 73, [2017] 3 I.R. 812. The additional criteria required to be met in order that the so-called leapfrog appeal directly from the High Court to this court can be permitted were addressed by the court in *Wansboro v. Director of Public Prosecutions* [2017] IESCDT 115 (Unreported, Supreme Court, 20 November 2017). Accordingly, it is unnecessary to revisit the new constitutional architecture for the purpose of this determination.
2. Furthermore, the application for leave filed and the respondent's notice are published along with this determination (subject only to any redaction required by law) and it is therefore unnecessary to set out the position of the parties in any detail. No aspect of this ruling has precedential value as a matter of law.

### **Background**

3. The applicant sought to challenge a decision of the respondent not to investigate a complaint made against a financial services provider in the High Court. The subject matter of the complaint was a housing loan mortgage entered into by the applicant. The applicant sought to challenge the decision but did so neither by means of the statutory appeal mechanism, nor by judicial review. He instead sought to issue an originating notice of motion pursuant to Order 84B of the Rules of the Superior Courts.
4. The respondent raised a procedural objection to the proceedings, arguing that the applicant should have gone by way of judicial review pursuant to Order 84 of the Rules of the Superior Courts. In a judgment delivered 8th February 2022, Simons J. dismissed the applicant's challenge, having concluded that the procedural objection was well founded and that the proceedings were improperly constituted ([2022] IEHC 46). He found that the non-compliance with the Rules of the Superior Courts in this case was not a mere technical breach and had the potential to prejudice the financial services provider as the mandatory requirement to serve notice of the proceedings on all persons directly affected was not complied with.

### **Application for Leave**

5. The applicant seeks to appeal the decision of the High Court. In his submissions as to why the application raises matter(s) of general public importance, he lists arguments as to why he alleges the respondent's decision not to investigate the complaint is wrong. He does not engage with the judgment of the High Court save as to say that a final decision will give guidance to the Ombudsman, providers and the public.

6. The applicant argues that it is in the interests of justice that the appeal be allowed. He submits that the conclusions of the High Court judge were not backed up by law, and that logically the dismissal of the proceedings is illegal. He urges this Court to rule on what the appropriate procedure should be, submitting that Order 84B is more appropriate “considering the Ombudsman has jurisdiction, no procedural impropriety, the errors made might be difficult to prove unreasonableness or irrationality as grounds for judicial review”.
7. Under Article 34.5.4 of the Constitution, this Court will grant leave for a direct appeal from the High Court only in exceptional circumstances. The applicant refers to a previous determination of this Court, wherein his application was refused leave (*Flavio Jr Suarez v. Permanent TSB* [2022] IESCDET 23). This application related to a decision by the High Court to refuse to grant leave to bring judicial review proceedings against a decision of a County Registrar who struck out proceedings. That decision was upheld by the Court of Appeal.
8. The applicant argues that this Court made (what he alleges are) incorrect assumptions as to the stage at which those earlier proceedings were struck out. Because the earlier proceedings had been ruled upon by the Supreme Court (albeit erroneously in his submission) the applicant argues that it is right that this appeal goes straight to the Supreme Court.

#### **Respondent’s Notice**

9. The respondent opposes granting leave to appeal to the Supreme Court to the applicant. The ombudsman submits that the applicant does not explain how his appeal from the judgment of the High Court is stateable, or how it raises any matter of general public importance. Instead, the respondent argues that the applicant only addresses the merits of the underlying proceedings rather than the procedural objection. The ombudsman submits further that it is not sufficient for the applicant to rely solely on an alleged error in the High Court judgment for this appeal to be granted in the interests of justice.
10. The respondent argues no exceptional circumstances arise such that an appeal to the Supreme Court is necessary without it first going to the Court of Appeal. The respondent submits that there is no legal principle whereby a direct appeal to the Supreme Court is exceptionally justified simply because the Supreme Court has previously heard (and rejected) a leave application brought by the same litigant in separate proceedings.

#### **Decision**

11. This Court is satisfied that no circumstances arise such that leave to appeal under Article 34.5.4 of the Constitution should be granted. The fact that the applicant has previously had an application for leave to the Supreme Court refused, when that application concerned different proceedings and focused on a different point of law, is not sufficient to establish exceptional circumstances. This remains the case even despite the applicant’s

allegations that the earlier determination was based on erroneous factual inferences, none of which he has shown to be false.

12. Moving beyond the requirement that a basis for a direct appeal from the High Court must be established, this Court is moreover not satisfied that the application should be granted leave in the interests of justice or because it raises a matter of general public importance.
13. The applicant has not put forth any stateable argument as to why or how the judgment of Simons J. was incorrect in law; he has simply made bald assertions to that effect. Furthermore, the law on the correct manner to initiate proceedings and appeals from decisions of the financial services ombudsman is very clear and well-established. A reading of the Financial Services and Pensions Ombudsman Act 2017 and the Rules of the Superior Courts is enough to conclude that an applicant is not authorised to bring an application under Order 84B RSC.
14. This Court does not grant leave to the applicant to appeal from the High Court.

**AND IT IS HEREBY SO ORDERED ACCORDINGLY.**