

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA43/2026
[2026] NZCA 269**

BETWEEN	TERENCE ARTHUR KIRKHAM First Applicant
AND	TATA TRUSTEE LIMITED Second Applicant
AND	BRENT RETFORD WINKELMANN AND LOUISE ANNE FOLEY First Respondents
AND	NASHORN LIMITED AND MERE TRUSTEES LIMITED Second Respondents
AND	KEVIN GLOVER Third Respondent

Court: French P and Collins J

Counsel: G J Judd KC and T M Newman for First and Second Applicants
D J Cooper KC and J W H Little for First and Second Respondents
B D Gray KC and M A Karlsen for Third Respondent

Judgment: 23 June 2026 at 12 pm
(On the papers)

JUDGMENT OF THE COURT

- A The application for leave to appeal is declined.**
- B The first and second applicants must pay the first and second respondents one set of costs and the third respondent one set of costs, in each case for a standard application on a band A basis together with usual disbursements.**
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REASONS OF THE COURT

(Given by Collins J)

Introduction

[1] The applicants, Mr Kirkham and his trust company, Tata Trustee Ltd (Tata), seek leave to appeal two interlocutory decisions of Associate Judge Cogswell. In his decisions, the Judge granted Mr Winkelmann and Ms Foley's application seeking various procedural orders which we explain at [7] and declined Mr Kirkham's application challenging privilege over certain communications.¹

[2] The second respondents, Nashorn Ltd and Mere Trustees Ltd, are trustee companies associated with Mr Winkelmann and Ms Foley, and the third respondent is a barrister who advised Mr Winkelmann and Ms Foley in their partnership dispute with Mr Kirkham and acted for them in the arbitration with Mr Kirkham.

Background

[3] The proceedings arise from a dispute between former partners of a law firm. Mr Winkelmann and Ms Foley are directors of a Taupō law firm. They were in partnership with Mr Kirkham until they expelled him for gross misconduct on 13 September 2019. Mr Kirkham challenged the validity of his expulsion and referred the dispute to arbitration. The arbitrator held that Mr Kirkham had been validly expelled. Mr Kirkham did not appeal the arbitration award.

[4] These events led to two proceedings in the High Court:

- (a) Mr Winkelmann and Ms Foley sought the transfer to them of certain trust property still retained by Mr Kirkham and Tata (the substantive proceeding); and

¹ *Winkelmann v Kirkham* [2025] NZHC 1678 [first judgment]; and *Winkelmann v Kirkham* [2025] NZHC 1999 [second judgment].

(b) Mr Kirkham sought an order under art 34 of sch 1 of the Arbitration Act 1996 setting aside the arbitral award on the basis it was “induced by fraud or corruption” (the originating application).

[5] Mr Kirkham counterclaimed in the substantive proceeding seeking damages. Mr Glover was joined as a counterclaim defendant on the basis that he was a party to “an unlawful conspiracy” against Mr Kirkham.

[6] Mr Winkelmann and Ms Foley sought procedural directions in the High Court. Mr Kirkham objected to the orders sought and challenged claims to privilege over certain communications. The Judge heard both applications on 16 June 2025 and issued two interlocutory judgments dated 24 June 2025 (the first judgment), and 18 July 2025 (the second judgment).

[7] The first judgment directed, inter alia, that the originating application be tried as an ordinary proceeding and granted Mr Winkelmann and Ms Foley’s application to have the proceedings tried together, with evidence only given once without requiring supporting affidavits to their opposition to the originating application. Their evidence in support of their opposition was to be given orally at trial at the same time as their oral evidence in the substantive proceeding, with briefs to be served in the usual way under pt 9 of the High Court Rules 2016 (the Rules).²

[8] The second judgment declined Mr Kirkham’s application challenging privilege claimed over certain communications including legal advice obtained by Mr Winkelmann and Ms Foley in 2019 and a letter marked “without prejudice” dated 19 August 2019.³

[9] The applicants applied in the High Court for leave to appeal to this Court under s 56(3) of the Senior Courts Act 2016. That application was declined on 9 December 2025.⁴ The applicants now seek leave from this Court to appeal both judgments pursuant to s 56(5) of the Senior Courts Act.

² First judgment, above n 1, at [13] and [51].

³ Second judgment, above n 1, at [2] and [66].

⁴ *Winkelmann v Kirkham* [2025] NZHC 3819.

General principles

[10] It is well established that the requirements to obtain leave to appeal interlocutory decisions under s 56(5) of the Senior Courts Act operate as a filtering mechanism to ensure that unmeritorious appeals of interlocutory orders, or appeals of interlocutory orders of no great significance, do not unnecessarily delay the proceedings in which those orders were made.⁵

[11] The relevant principles were summarised by this Court in *Greendrake v District Court of New Zealand*:⁶

- (a) a high threshold exists;
- (b) the applicant must identify an arguable error of law or fact;
- (c) the alleged error should be of general or public importance warranting determination or otherwise of sufficient importance to the applicant to outweigh the lack of general or precedential value;
- (d) the circumstances must warrant incurring further delay; and
- (e) the ultimate question is whether the interests of justice are served by granting leave.

Grounds of appeal

[12] The proposed grounds of appeal can be distilled to four alleged errors in the High Court judgments:

- (a) by delivering two judgments rather than one, with the applicants arguing that to do “impair[ed] the integrity of the judicial decision making process”;
- (b) by making orders regarding the nature and timing of evidence to be exchanged in the two proceedings in breach of rr 19.10(1)(g), 7.25 and 7.49(2)(a) of the Rules, thereby varying the orders made by Muir J by consent on 8 July 2024;

⁵ *Greendrake v District Court of New Zealand* [2020] NZCA 122 at [6], citing *Finewood Upholstery Ltd v Vaughan* [2017] NZHC 1679 at [13].

⁶ *Greendrake v District Court of New Zealand*, above n 5, at [6].

- (c) by finding no joint interest privilege in the legal advice obtained by the Mr Winkelmann and Ms Foley in 2019 concerning Mr Kirkham's expulsion from the partnership; and
- (d) by finding that a without prejudice privilege exists in relation to the letter dated 19 August 2019.

Applicants' submissions

[13] In addressing the leave criteria, the applicants submit the alleged errors of law they have identified are seriously arguable. They contend the proposed appeal is bona fide and raises matters of public and private interest.

[14] In particular, the applicants submit the familial relationship between Mr Winkelmann and the Chief Justice assumes particular significance in the present application because the Court must weigh both public and private interests when considering leave to appeal. They say:

The relationship calls for exceptional care to ensure that the rules are applied with punctilious fairness and that established judicial procedure is observed, so no reasonable observer could apprehend partiality.

In the Court below, the rules were not followed, and an unusual procedure was adopted. The interests of justice require that leave be granted so the Court of Appeal can examine the application of the rules and the procedure adopted, giving to these matters the scrupulous attention required to ensure there can be no appearance that [Mr Winkelmann and Ms Foley] are being insulated from the obligations that bind all litigants in civil proceedings.

Respondents' opposition and submissions

First and second respondents

[15] Mr Winkelmann and Ms Foley and their associated trustee companies oppose the leave application. They submit:

- (a) that none of the proposed grounds of appeal are seriously arguable;
- (b) allowing an appeal to proceed will delay the substantive High Court proceedings; and

- (c) they are entitled to have the allegations against them, which are outrageous in nature, heard and dismissed without unnecessary delay.

Third respondent

[16] Mr Glover also opposes the leave application. His position is that all proposed grounds of appeal fail to meet the high threshold for leave to appeal. There has been no abuse of the Rules, no error with respect to privilege, and no departure from usual judicial procedure. Mr Kirkham has failed to identify any arguable error of law or fact. It is in the interests of justice for leave to be declined.

Analysis

[17] The application for leave to appeal does not meet the high threshold for leave to be granted. The applicants do not raise any seriously arguable question of law or fact:

- (a) there is no rule that a single judgment be delivered for multiple applications heard together;
- (b) the Court has extremely broad discretion under the Rules to make procedural orders;⁷
- (c) the procedural decisions caused no prejudice to Mr Kirkham; and
- (d) there was no error as to privilege — the legal advice was provided to Mr Winkelmann and Ms Foley in their personal capacities, not on behalf of the then-partnership, and the “without prejudice” letter contained an offer to settle, meaning it is privileged under s 57(1) of the Evidence Act 2006.

[18] The proposed appeal does not raise an issue of general or public importance; the suggestion that declining the leave application would lead a reasonable observer to apprehend partiality is totally misconceived.

⁷ See High Court Rules 2016, rr 10.12 and 19.13.

[19] Finally, if leave is refused, nothing prevents the grounds being raised in any appeal against the High Court's substantive decision.⁸ Granting the application will only delay the substantive High Court proceedings further. It is therefore plainly in the interests of justice that leave to appeal is declined.

Result

[20] The application for leave to appeal is declined.

[21] The first and second applicants must pay the first and second respondents one set of costs and the third respondent one set of costs, in each case for a standard application on a band A basis together with usual disbursements.

Solicitors:
Steindle Williams Legal, Auckland for First and Second Applicants
ESL Legal, Auckland for First and Second Respondents
Wotton Kearney, Auckland for Third Respondent

⁸ Senior Courts Act 2016, s 56(6).