

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA856/2025
[2026] NZCA 249**

BETWEEN BENJAMIN MORLAND EASTON
Applicant
AND WELLINGTON CITY COUNCIL
First Respondent
AND ATTORNEY-GENERAL
Second Respondent

CA857/2025

BETWEEN BENJAMIN MORLAND EASTON
Applicant
AND ATTORNEY-GENERAL
First Respondent
AND WELLINGTON CITY COUNCIL
Second Respondent
AND LAND INFORMATION NEW ZEALAND
Third Respondent

Court: Edwards and Lang JJ

Counsel: Applicant in person
Appearance excused for Respondents in CA856/2025
Appearance excused for Respondents in CA857/2025

Judgment: 15 June 2026 at 10 am
(On the papers)

JUDGMENT OF THE COURT

The applications for an extension of time to appeal are declined.

REASONS OF THE COURT

(Given by Lang J)

[1] Mr Easton applies for extensions of time under r 29A of the Court of Appeal (Civil) Rules 2005 to bring appeals against two decisions of the High Court. In each of these decisions, the High Court struck out a proceeding filed by Mr Easton on the basis that it was an abuse of the court's process.¹

Relevant principles

[2] In *Almond v Read*, the Supreme Court set out the relevant principles in respect of extensions of time under r 29A.² The ultimate question in any given case is what the interests of justice require.³

[3] The factors that are likely to guide the exercise of the discretion under r 29A include:⁴

- (a) The length of any delay.
- (b) The reasons for the delay.
- (c) The conduct of the parties, and in particular the applicant.
- (d) Any prejudice or hardship to the respondents or to others with a legitimate interest in the outcome.
- (e) The significance of the issues raised by the proposed appeal, both to the parties and more generally.

¹ *Easton v Wellington City Council* [2025] NZHC 596; and *Easton v Attorney-General* HC Wellington CIV-2025-485-690, 2 October 2025 (Minute of Churchman J).

² *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801.

³ At [38].

⁴ At [38].

[4] The merits of the proposed appeal may also be relevant, but any consideration of these must be relatively superficial.⁵ A decision to refuse an extension of time on the basis of a lack of merit should be made only where the appeal is clearly hopeless.⁶

CA856/2025

Mr Easton's claims

[5] This appeal relates to a proceeding in which Mr Easton sought judicial review against decisions purportedly made by the Wellington City Council (the Council) and the Crown. On two occasions, the High Court directed him to file a more explicit statement of claim.⁷ Mr Easton responded by filing a 30-page amended statement of claim.⁸ This prompted the Council and the Attorney-General to apply for orders that the statement of claim be struck out under r 15.1 of the High Court Rules 2016.⁹ McHerron J struck out the statement of claim in its entirety in a judgment delivered on 21 March 2025.¹⁰

[6] The Judge described the current version of the statement of claim as follows:¹¹

[7] The thirty page second amended statement of claim dated 12 September 2024 contains three causes of action linked, according to the applicant, by what appears to be a narrative about New Zealand's constitutional framework. The statement of claim does not comply with the rule that each paragraph must be confined to a single topic. But the problems with the claim go well beyond compliance with rules of pleading, and are fundamental. The second amended statement of claim is a rambling, disconnected and diffuse narrative. It is difficult to follow, lacks structure, and is, in parts, incoherent. This has made it difficult, if not impossible, for the respondents to attempt to respond to it, because it does not clearly outline the allegations against them. However, allowing for the fact that the applicant is a litigant in person, I have attempted to summarise his core allegations as follows.

⁵ At [39] and [39(c)].

⁶ At [39(c)].

⁷ *Easton v Wellington City Council*, above n 1, at [1].

⁸ At [7].

⁹ At [5].

¹⁰ At [33], [37], [40] and [43].

¹¹ Footnote omitted.

[7] The Judge then went on to summarise the three causes of actions contained in the current version of the statement of claim.¹² We provide an abbreviated summary as follows:

- (a) In the first cause of action Mr Easton sought a declaration that the introduction of the Care of Children Bill 2003¹³ was inconsistent with s 6 of the New Zealand Bill of Rights Act 1990 (the NZBORA).¹⁴
- (b) The second cause of action related to a dispute about land situated at Shelly Bay, Wellington. In that dispute Mau Whenua alleged that the Port Nicholson Block Settlement Trust (the Trust) unlawfully sold the land to developers.¹⁵ The Trust was the post-settlement governance entity arising from the settlement of historical grievances against the Crown by Taranaki Whānui ki Te Upoko o Te Ika.¹⁶ Mr Easton alleged that the Council knew or should have known that cl 19.1 of the deed relating to the Trust prohibited the trustees from taking further advice from it.¹⁷ Mr Easton also contended the Registrar-General of Land should review the transfer of land from the Trust to the developers with a view to lodging a caveat under s 149 of the Land Transfer Act 2017.¹⁸ Mr Easton also sought to challenge trespass notices the Council had served on himself and other people at Shelly Bay.¹⁹ As relief, Mr Easton sought “through habeas corpus” to “reform relationships between the Crown and all indigenous to the land as living on the land prior to the codified formulation of 14 January 1840”.²⁰
- (c) In the third cause of action Mr Easton alleged that the Fast-track Approvals Bill 2024²¹ was deficient because the Attorney-General’s

¹² At [8]–[20].

¹³ Care of Children Bill 2003 (54-1).

¹⁴ *Easton v Wellington City Council*, above n 1, at [8].

¹⁵ At [10]. The background to that dispute is canvassed in *Mau Whenua Inc v Shelly Bay Investments Ltd* [2019] NZHC 3222, (2019) 20 NZCPR 923.

¹⁶ *Easton v Wellington City Council*, above n 1, at [10].

¹⁷ At [12].

¹⁸ At [14(a)].

¹⁹ At [14(b)].

²⁰ At [15].

²¹ Fast-track Approvals Bill 2024 (31-1).

report under s 7 of the NZBORA was not tabled on the day the Bill was introduced in the House of Representatives.²²

[8] The Judge noted that the amended statement of claim also referred to other matters, none of which were particularised as a separate cause of action.²³ They were:²⁴

- (a) “David Seymour and the Principles of the Treaty of Waitangi”.
- (b) “Rainbow crossing”.
- (c) “Special vehicle lane 24-hour infringement entrapments at Riddiford Street Hospital entrance”.

[9] Finally, Mr Easton sought a “prospective costs order” requiring the Government to commence paying him New Zealand Superannuation even though he has not yet attained the age of 65 years.²⁵

High Court decision

[10] McHerron J considered that the first cause of action amounted to an attempt by Mr Easton to relitigate issues that had already been determined in the earlier judgment of Mallon J in *Easton v Governor-General*.²⁶ The Judge concluded that this amounted to “a clear example of abuse of process”.²⁷

[11] Even if the issue had not already been finally determined, the Judge considered that, as currently pleaded, it did not disclose a reasonably arguable cause of action. This was because s 6 of the NZBORA has an interpretative rather than an operative purpose. The Judge noted that it was not clear how the introduction of the Care of Children Bill could be inconsistent with a statutory provision that instructs decision-makers to interpret other legislative provisions consistently with the

²² *Easton v Wellington City Council*, above n 1, at [18].

²³ At [20].

²⁴ At [19].

²⁵ At [3].

²⁶ At [31], referring to *Easton v Governor-General* [2012] NZHC 206.

²⁷ *Easton v Wellington City Council*, above n 1, at [31].

provisions of the NZBORA.²⁸ Further, even if Mr Easton intended to refer to s 7 rather than s 6, that section did not set out any right or freedom in respect of which a declaration of inconsistency could be made.²⁹

[12] On the second cause of action, the Judge concluded Mr Easton had not shown that he had standing to bring a claim on behalf of the beneficiaries of the Trust.³⁰ Further, this claim was also an abuse of process because issues relating to the validity of the sale of the land in Shelly Bay had already been the subject of judicial decisions or were subject to litigation currently in progress.³¹

[13] The balance of the second cause of action related to the trespass notices that had been served on Mr Easton and other persons. The Judge held that the relief he sought, namely the reformulation of relationships with indigenous communities, was not something that the Court had jurisdiction to order.³² More fundamentally, Mr Easton had not provided particulars of the decisions he was seeking to review. This meant the Council could not provide an adequate response to his claims.³³

[14] As to the third cause of action, the Judge held that it was not reasonably arguable. This was because the Attorney-General is only required to highlight proposed legislation when it is inconsistent with the rights contained in the NZBORA.³⁴ The Attorney-General had received advice from the Ministry of Justice that the Fast-track Approvals Bill was consistent with the NZBORA.³⁵ It followed that she had no obligation to raise the issue of consistency when the Bill was introduced to the House of Representatives.

[15] The Judge also accepted the Attorney-General's argument that judicial review of the performance of her duties under s 7 of the NZBORA forms part of the legislative

²⁸ At [32].

²⁹ At [32].

³⁰ At [34].

³¹ At [34], citing *Mau Whenua Inc v Shelly Bay Investments Ltd*, above n 15, and *Gilbert v Mulligan – Part 3 Lot DP 3020* (2023) 466 Aotea MB 164 (466 AOT 164).

³² *Easton v Wellington City Council*, above n 1, at [35].

³³ At [36].

³⁴ At [39].

³⁵ Ministry of Justice *Consistency with the New Zealand Bill of Rights Act 1990: Fast-track Approvals Bill* (1 March 2024).

process and therefore engages the principles of comity and non-interference.³⁶ The Judge said that the application of these principles would have led him to strike out this cause of action in any event.³⁷

[16] Finally, the Judge declined the application for an order that Mr Easton be paid New Zealand Superannuation in advance of attaining the age of 65 years.³⁸ He noted that Mr Easton relied in this context on the prospective costs order made by the Supreme Court in *Whakatōhea Kotahitanga Waka (Edwards) v Ngāti Ira o Waiōweka (Prospective Costs Order)*.³⁹ The Judge concluded that the primary hurdle to this claim was that the Court had no jurisdiction to order that a person was entitled to receive New Zealand Superannuation before that entitlement arose under the law.⁴⁰

Decision

[17] We give weight to the fact that Mr Easton does not have the benefit of legal counsel.⁴¹ However, the delay in filing the appeal is significant, it having been filed more than six months out of time. Further, we have concluded that it would be inappropriate to grant an extension of time in circumstances where the appeal is clearly hopeless (for the reasons given by the Judge). It would not be an efficient or worthwhile use of this Court's resources to hear an appeal when the claims that Mr Easton wishes to advance are so clearly devoid of merit. The application for an extension of time to bring this appeal must therefore be declined.

CA857/2025

[18] Mr Easton filed a statement of claim in the High Court on 22 September 2025. The statement of claim was accompanied by a without notice application for

³⁶ *Easton v Wellington City Council*, above n 1, at [41], citing *Boscawen v Attorney-General* [2009] NZCA 12, [2009] 2 NZLR 229 at [32].

³⁷ *Easton v Wellington City Council*, above n 1, at [41].

³⁸ At [49].

³⁹ At [3], referring to *Whakatōhea Kotahitanga Waka (Edwards) v Ngāti Ira o Waiōweka (Prospective Costs Order)* [2024] NZSC 119, [2024] 1 NZLR 418.

⁴⁰ *Easton v Wellington City Council*, above n 1, at [47], citing New Zealand Superannuation and Retirement Income Act 2001.

⁴¹ See *Rabson v Gallagher* [2011] NZCA 204 at [9].

directions.⁴² The statement of claim named the Attorney-General, the Council and Land Information New Zealand as defendants.

[19] The Registrar referred the documents to Churchman J under r 5.35A of the High Court Rules, requiring the Judge to consider whether the proceeding should be struck out as an abuse of the court's process under r 5.35B.

High Court decision

[20] The Judge noted that the statement of claim began by stating the proceeding was “a challenge on New Zealand's contemporary colonial all-consuming neglected to ignorant history”.⁴³ The first cause of action referred to s 3 of the Declaratory Judgments Act 1908 and stated that “the Treaty of Waitangi is brought to the High Court for a test of competent jurisdiction”.⁴⁴

[21] The second cause of action was in the following terms:⁴⁵

Local and CROWN governance are aligned to neglect as without a full, proper and honourable consultation, with “Maori” causing alienation to history so prior to the sovereignty Proclamation of Governor Gipps 14 January 1840 — wherein the evidence to be presented in trial for disclosure and submissions will explain a) the avoidance of regulatory based consultation and b) a practice of excluding those entitled from the political narrative — both at Mokau\Poutama and at Whanganui-a-tara — ngai tara.

[22] Paragraph six of the statement of claim alleges:⁴⁶

The KING or the CROWN have historically faulted the text of the Treaty of Waitangi to provide and [sic] biased application of sovereignty that is unsafe as unstable and law. The nobility of those actively in opposition rises above the self-appointed nobility drawn down from Westminster to govern the lands commonly referred to as New Zealand.

⁴² Minute of Churchman J, above n 1, at [1].

⁴³ At [5].

⁴⁴ At [7].

⁴⁵ At [8].

⁴⁶ At [9].

[23] Under the heading “relief”, the statement of claim did not contain any prayer for relief against any of the named defendants.⁴⁷ Rather, it sought:⁴⁸

A declaration of inconsistency with s 8 and s 28 (being extinguished fundamental rights to life and quality of life) of the New Zealand Bill of Rights Act 1990 is applied for:

- (i) That the chiefs known to have not signed either the Declaration of Independence 1835 and/or the Treaty of Waitangi 1840 are declared to hold Perfect Title of those their unextinguished title to those lands; and
- (ii) Subject to this Declaration those identified non-signatory chiefs for their living heirs and successors through their associated hapu are entitled continued payment in the X (RENT) according to those principles agreed between them and the KING (or CROWN).

[24] The Judge described the statement of claim as “incomprehensible” and said that it disclosed no valid cause of action.⁴⁹ Nor was it possible to discern any relief that the Court may have jurisdiction to grant.⁵⁰ On that basis, the Judge concluded the proceeding was plainly an abuse of the court’s process and that it should be struck out under r 5.35B.⁵¹

The appeal

[25] The appeal to this Court has followed a tortuous path. On 5 November 2025, Mr Easton filed a document entitled “Informal application for directions assisting leave to appeal out of time”. This document attached the decisions of McHerron J and Churchman J. Mr Easton said that he sought “instructions from the Court on how leave and the out of time matters of appeal should be dealt with”.

[26] A Deputy Registrar refused to accept this document for filing. The Deputy Registrar advised Mr Easton that he would need to make an application for an extension of time to appeal each decision under r 29A of the Court of Appeal (Civil) Rules.

⁴⁷ At [10].

⁴⁸ At [10].

⁴⁹ At [13].

⁵⁰ At [13].

⁵¹ At [14]–[15].

[27] Mr Easton sought review of the Deputy Registrar’s decision. In a judgment issued on 18 December 2025, Mallon J declined the application for review of the Deputy Registrar’s decision.⁵² She held that Mr Easton was not entitled to make an informal application under r 10B(1) of the Court of Appeal (Civil) Rules in the absence of a rule, judgment, order, minute or other direction permitting him to do so.⁵³ For reasons of expediency, however, Mallon J was prepared to treat Mr Easton’s informal application for directions as applications for an extension of time to appeal against the two High Court decisions.⁵⁴ Mallon J directed the Deputy Registrar to accept Mr Easton’s applications for filing on this basis. She further directed that the respondents in each proceeding were not required to take any steps.⁵⁵

[28] Mr Easton sent an email to the Registry on 22 April 2026 in which he asked for the hearing of the applications for an extension of time to be suspended “not least because the communication engaged with the Supreme Court encompassing these matters is still to be ordered”. On 24 April 2026, Ellis J directed that the on the papers hearing of the two applications would proceed as scheduled during the week of 8 June 2026. She directed that Mr Easton was to file anything further in support of the applications by 1 May 2026.

[29] Mr Easton sent a further email to the Registry on 1 May 2026 asking Ellis J to recall her direction refusing to adjourn the hearing. On 8 May 2026, Ellis J advised Mr Easton that the notice of fixture was not reviewable and drew his attention to the fact that he was entitled to apply for an adjournment if he wished to do so. Ellis J recorded that any such application would be considered on its merits.

[30] Mr Easton subsequently filed an application seeking recall of the directions Ellis J had made on 8 May 2026. He also applied for an adjournment of the hearing in the week of 8 June 2026. In a minute dated 22 May 2026, Ellis J declined both applications.⁵⁶ She considered that Mr Easton had not established grounds either for

⁵² *Easton v Wellington City Council* [2025] NZCA 690.

⁵³ At [5].

⁵⁴ At [6].

⁵⁵ At [6].

⁵⁶ *Easton v Wellington City Council* CA856/2025, 22 May 2026 (Minute of Ellis J) at [3].

recall of her earlier directions or for an adjournment of the hearing.⁵⁷ Ellis J again directed that the hearing in the week of 8 June 2026 was to proceed.⁵⁸

Decision

[31] We accept that the delay in filing the appeal is short, it having been filed only three working days out of time. However, we are satisfied that the appeal is clearly hopeless, that Mr Easton’s pattern of behaviour constitutes an abuse of the Court’s process and that the respondents would be prejudiced by the grant of an extension of time.

[32] The informal application that Mallon J directed be accepted for filing does not advance any basis on which the Court should grant an extension of time to appeal. Rather, it contains an unsubstantiated allegation that McHerron and Churchman JJ and Mr David Seymour “have committed perjury”. The application also asked the Court to schedule both appeals to be heard together and sought an order for Mr Seymour to give evidence.

[33] Mr Easton filed a further document with the Court on 20 December 2025. This document also does not address the principles applying to applications under r 29A and provides no further guidance or assistance as to the grounds on which Mr Easton advances his applications. In this document Mr Easton stated:

... I accept the decision but only in the part that it allows the allegations to bypass judicial immunities. To that end I utilise the rule 29A (3) (b) period of 20 working days filing for the 2 out of time appeals to be brought. To remove doubt, this document does not presently interfere with the judgment. Instead, it navigates (1 element) in part evidence that has been neglected for the judgment.

[34] However, any reliance in this context on r 29A(3)(b) is misconceived. That rule only applies where an extension of time has already been granted. It provides the timeframe within which an appellant must bring an appeal if no time has been specified by the Court or the Judge. The rule does not apply in the present case because Mr Easton has not been granted an extension of time to appeal.

⁵⁷ At [2].

⁵⁸ At [3].

[35] Mr Easton also says that he seeks directions and demands urgency. Under the heading “Informal Application and evidence for directions”, Mr Easton refers to the recent decision of the Supreme Court in *Pascoe v Minister for Land Information* and says:⁵⁹

The evidence to be analysed was known to [Churchman J] whether or not efficiently presented in *Poutama Kaitiaki Charitable Trust v Heritage New Zealand Pouhere Taonga* ... being at the very end of the environmental safety net and was neglected for any strain of veracity and consequently was rerouted — so qualifying the elaboration to the identified travesty.

[36] We fail to see how the decision of Churchman J in *Poutama Kaitiaki Charitable Trust v Heritage New Zealand Pouhere Taonga* is relevant to the matters in respect of which Mr Easton seeks an extension of time to appeal.⁶⁰

[37] On 22 April 2026, Mr Easton filed a very lengthy document with the Court. It covers a myriad of topics but none of them appear to relate to the issues raised in this appeal.

[38] Taking these matters into account, we are satisfied that Mr Easton has failed to demonstrate any rational basis on which the Court should grant an extension of time within which to advance the appeal in this proceeding. We consider the proceeding Mr Easton filed in the High Court is plainly an abuse of that Court’s process, for the reasons given by Churchman J. No useful purpose would be served in granting Mr Easton an extension of time to appeal to this Court.

Costs

[39] We make no order for costs, given that the respondents in each proceeding were directed not to participate.

Result

[40] The applications for an extension of time to appeal are declined.

⁵⁹ *Pascoe v Minister for Land Information* [2025] NZSC 195, [2025] 1 NZLR 939.

⁶⁰ *Poutama Kaitiaki Charitable Trust v Heritage New Zealand Pouhere Taonga* [2022] NZHC 2713.