IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA306/2022
[2023] NZCA 521

BETWEEN	CATHERINE ANNE SIXTUS Appellant
AND	JACINDA KATE ARDERN First Respondent
	KRIS FAAFOI Second Respondent
	ANDREW LITTLE Third Respondent
	ASHLEY BLOOMFIELD Fourth Respondent

Court:	Brown and Katz JJ
Counsel:	Appellant in person P J Gunn and A J Vincent for Respondents
Judgment: (On the papers)	26 October 2023 at 10.30 am

JUDGMENT OF THE COURT

A **The application for an extension of time under r 43(2) of the Court of Appeal (Civil) Rules 2005 is declined.**

B **The appellant must pay the respondents jointly one set of costs for a standard interlocutory application on a band A basis, with usual disbursements.**

REASONS OF THE COURT

(Given by Brown J)

Introduction

[1] The appellant appeals from a judgment of Cooke J dated 24 May 2022 striking out under r 15.1 of the High Court Rules 2016 the appellant's statement of claim on the ground the proceeding was an abuse of process.[1]

[2] On 21 June 2022 the appellant filed a notice of appeal against that decision. She has not yet paid the filing fee in respect of her appeal and consequently has been unable to apply for the allocation of a hearing date as required by r 43(1) of the Court of Appeal (Civil) Rules 2005 (the Rules).[2]

[3] On 23 May 2023 the appellant filed an interlocutory application under r 43(2) for an extension of time for complying with r 43(1). The respondents oppose the application.

The High Court judgment

[4] The appellant's statement of claim was filed and served in March 2022. The nature of the claim was unclear. Declaratory relief was sought in the following terms:[3]

> 1. Do pray A declaration to consolidate the 1865–1908 native rights Acts and including a new declaration to deem European progeny and Native ma-ori progeny, posterities and New Zealand people - to be deemed to be natural-born subjects of (H)er Majesty Queen Elizabeth II of United Kingdom and Ireland as it pleased Almighty God.
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> And to declare that the Native AB-original "will" of 1865 and European Ancient "will" of 1688 English speakers of New Zealand to (t)heir progeny be protected by the Queens Courts of Law to continue to extend over the persons and properties of all Her Majesty's subjects within New Zealand.
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> 2. Do pray A declaration to the affect clearly stating the applicants' Ancient 1688 subject right under Almighty God exists pursuant to s 28 Other

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1 *Sixtus v Ardern* [2022] NZHC 1161 [High Court judgment].

2 Rule 37(2) specifies that an appellant may not apply for the allocation of a hearing date under r 38(1) if they are in default of any obligation to pay prescribed fees.

3 High Court judgment, above n 1, at [2].

rights and freedoms not affected of the 1990 New Zealand bill of right ordinary law, without ordering any specific action pursuant to section 2 of the Declaratory Judgements Act 1908.

3. Do pray A declaration to the affect that when two subordinating laws (1993 electoral Act 55 (b)(c) and 55 AA) conflict each other with both an argument for the declaration of indubitable and progeny right that pleased Almighty God and an argument for the declaration of inconsistency fundamental right.

   Which right shall be deemed, and taken to be allowed?

   Which declaration whatsoever shall serve their Majesties for all times to come?

4. Do pray A declaration that every particular of the New Zealand parliament, including High Courts and all Ministers to dispense with laws and exercise of late in clear language and particularly 1688 Subjects Bill of Rights New Zealand or 1990 New Zealand Bill of Rights or "Fundamental Bill of Rights New Zealand" and to avoid the confusion that has been cruelly and deceptively dispensed of late:

So help me God

[5] The Judge identified two fundamental problems with the statement of claim which he considered were not capable of being remedied by amendment:

> [16] The first point is that the allegations are unintelligible. It is not possible from a reading of the statement of claim to understand what allegations are being advanced in relation to particular rights or other legal matters, and what it is that has led to a relevant issue about them. The allegations in the statement of claim are very broad, and it does not identify particular disagreements or uncertainties in relation to matters of law that would be capable of being the subject of a declaration. The applicants' memorandum responding to the criticisms, and the oral arguments advanced by Ms Sixtus, did not make the position any clearer. I accept Mr Gunn's point that the pleaded claim is unintelligible. That is essentially the same conclusion that Palmer J reached in relation to the related proceeding in *Moore v Faafoi* which [was] struck out on 18 May under r 5.35B.
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> [17] Secondly, to the extent that it is possible to discern the allegations made, many are not within the jurisdiction of the Court. The matters listed as grievances referred to … above involve matters of policy, and some involve criticisms of Parliamentary enactments. That is so in relation to the first declaration that Ms Sixtus advised was being sought which seeks a "consolidation" of two ancient statutes. This is referred to in the first declaration sought in the statement of claim. Such matters are not within the jurisdiction of the Court. The grievances involve political issues, and debates on matters of policy. The Court is concerned with questions of law, and [with] resolving genuine disagreements or uncertainties on the meaning and effect of legislation or other legal instruments or questions. It does not have jurisdiction to determine questions of policy.

Relevant principles

[6] As this Court explained in *Yarrow v Westpac New Zealand Ltd*, the decision of the Supreme Court in *Almond v Read*,[4] although concerned with r 29A of the Rules rather than r 43, applies to any interlocutory application for an extension of time where there is a right of appeal.[5]

[7] The Supreme Court there stated that the ultimate question when considering the exercise of the discretion to extend time is what the interests of justice require. That necessitates an assessment of the particular circumstances of the individual case. The Court identified a number of factors which were likely to require consideration, including the length of the delay, the reasons for the delay and the conduct of the parties.[6]

[8] The Court accepted that the merits of a proposed appeal may, in principle, be relevant to the exercise of the discretion to extend time. However the Court stated:[7]

> … [A] decision to refuse an extension of time based substantially on the lack of merit of a proposed appeal should be made only where the appeal is clearly hopeless. An appeal would be hopeless, for example, where, on facts to which there is no challenge, it could not possibly succeed, where the court lacks jurisdiction, where there is an abuse of process (such as a collateral attack on issues finally determined in other proceedings) or where the appeal is frivolous or vexatious. The lack of merit must be readily apparent. The power to grant or refuse an extension of time should not be used as a mechanism to dismiss apparently weak appeals summarily.

Discussion

[9] Although the notice of appeal was filed well over a year ago, the appellant has not paid the filing fee for the appeal. Nor has she paid security for costs or lodged a case on appeal.

[10] Her disinclination to pay the filing fee has resulted in the matter twice being considered by the Supreme Court. The first occasion was a judgment dated 1 February 2023 declining the appellant's application for review of the decision by

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4 *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801.
5 *Yarrow v Westpac New Zealand Ltd* [2018] NZCA 601 at [4].
6 *Almond v Read*, above n 4, at [38]–[39].
7 At [39(c)].

the Deputy Registrar of the Supreme Court to decline to waive the filing fee on her application for leave to appeal to that Court.[8] The target of her proposed appeal was this Court's decision of 12 August 2022 declining an application to review the decision of a Deputy Registrar of this Court not to waive the payment of the filing fee on the appeal on public interest grounds.[9] The second occasion was on 12 July 2023 when the Supreme Court dismissed the appellant's application for an extension of time to apply for leave to appeal from the decision of 12 August 2022.[10]

[11] The appellant filed a memorandum in support of the current application, addressing in some detail what she alleged were delays on the part of the Court in responding to her various communications. Annexed to her memorandum were several copies of communications said to be illustrative of her contention.

[12] However the reality is that a significant period of time elapsed during which the appellant unilaterally failed to take steps to progress her appeal. In her r 43(2) application she explained:

> Then suddenly, Her Majesty Queen Elizabeth II passed away. Since my case is a petition to the King pursuant to the Bill of Rights 1688 [imp], I deemed it to be respectful to let King Charles III mourn his beloved mother. Then, I thought it rightful to await the Coronation of His Majesty King Charles III and Queen Camilla.

As the respondents correctly observe, the courts continued to operate during that period. Litigants were still required to meet their obligations, notwithstanding a change of Sovereign. In our view the appellant has failed to provide an adequate explanation for the delay in this matter.

[13] However, quite apart from the length of the delay and the reasons for it, we consider that the respondents' submission is sound that the proposed appeal is meritless. The respondents emphasise that in striking out the claim Cooke J considered the allegations made were unintelligible, that no cause of action was disclosed and that the deficiencies were too fundamental to be remedied by

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8 *Re Sixtus* [2023] NZSC 1.
9 *Sixtus v Ardern* [2022] NZCA 372.
10 *Sixtus v Ardern* [2023] NZSC 84.

amendment. We share that view. It is in the interests of justice that this litigation should not be further prolonged.

Result

[14] The application under r 43(2) for an extension of time is declined.

[15] The appellant must pay the respondents jointly one set of costs for a standard interlocutory application on a band A basis, with usual disbursements.

Solicitors:
Crown Law Office | Te Tari Ture o te Karauna, Wellington for Respondents