

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA432/2023  
[2025] NZCA 62

BETWEEN

DENNIS ARTHUR SMITH  
Applicant

AND

LAND INFORMATION NEW ZEALAND  
Respondent

Court: Ellis and Woolford JJ

Counsel: Applicant in person  
N H Brown for the Respondent

Judgment: 20 March 2025 at 11:30 am  
(On the papers)

---

JUDGMENT OF THE COURT

---

**A The application for an extension of time is declined.**

**B The applicant must pay costs to the respondent of \$1,800.**

---

REASONS OF THE COURT

(Given by Woolford J)

**Introduction**

[1] On 2 August 2023, Mr Dennis Arthur Smith filed an appeal against the decision of Associate Judge Brittain in *Land Information New Zealand v Smith*.<sup>1</sup> Judge Brittain granted summary judgment to Land Information New Zealand (LINZ), ordering that LINZ was entitled to vacant possession of land at 2A Para Street, Taumarunui, and requiring Mr Smith to vacate that property by 11 July 2023.

---

<sup>1</sup> *Land Information New Zealand v Smith* [2023] NZHC 1700.

[2] Mr Smith is not represented by counsel. The appeal was treated as abandoned pursuant to r 43(1) of the Court of Appeal (Civil) Rules 2005 (the Rules) over a year later on 9 August 2024.

[3] This judgment concerns two applications by Mr Smith. The first application is for “the production of missing evidence” (production order). It was made on 31 October 2023 for “the production of missing evidence” being “[a] copy of the email (with headers) sent to the lessee Graham Mills in September 2019 seeking his permission to share his contact details with me”. This application for a production order was not dealt with prior to the deemed abandonment of the appeal.

[4] The second application is for an extension of time, which was made by Mr Smith three days after the appeal was deemed abandoned, on 12 August 2024, for “[an] extension of time of all matters until the determination of the application for production of evidence”.

[5] A number of other applications by Mr Smith in relation to the judgment he seeks to appeal have previously been dealt with. Mr Smith applied for a stay of execution from both the High Court and this Court. Both were declined.<sup>2</sup> In relation to security for costs, the Deputy Registrar held that Mr Smith was to pay security for costs (on the basis he was not impecunious and, even if he was, a reasonable and solvent litigant would not proceed with the appeal because it lacks merit). A review of this decision was declined and an application for recall of the review judgment was also declined.<sup>3</sup> Although Mr Smith has signalled an application for leave to appeal to the Supreme Court no such application has been filed and he is now well out of time.

[6] Mr Smith has not paid any of the costs awards made against him. Nor (LINZ advises) has he fully complied with Judge Brittain’s orders.

---

<sup>2</sup> *Land Information New Zealand v Smith* [2023] NZHC 2147; and *Smith v Land Information New Zealand* [2023] NZCA 434.

<sup>3</sup> *Smith v Land Information New Zealand* [2024] NZCA 35; and *Smith v Land Information New Zealand* [2024] NZCA 348.

## Discussion

[7] Because the application for an extension of time is predicated on the application for a production order, we discuss both the applications together.

[8] Rule 43(1) of the Rules provides that:

An appeal is to be treated as having been abandoned if the appellant does not apply for the allocation of a hearing date and file the case on appeal within 3 months after the appeal is brought.

[9] Rule 43(1B) enables the Registrar to extend the three-month period prior to its expiry in certain defined circumstances, such as where a legal aid application has not yet been finally determined or has only been determined within the previous month.<sup>4</sup> In the present case, various extensions to the three-month period were granted by the Registrar before the appeal was treated as abandoned on 9 August 2024. However, none of the defined circumstances in r 43(1B) now apply, and a Registrar cannot grant an extension where an application is made after expiry of the extended period.<sup>5</sup>

[10] Rule 43(2) also enables the Court to grant an extension of the three-month period, as well as further extensions of any extended periods, if an application is made before the relevant period ends or within three months of that period ending.<sup>6</sup> Because a number of extensions of time have previously been granted by the Registry, pending the determination of his application for recall, Mr Smith's current application was made within the statutory timeframes.

[11] The principles in *Almond v Read* apply to any interlocutory application for an extension of time where there is an appeal as of right, as there is in the present case.<sup>7</sup> The ultimate question in considering whether to grant an extension of time is what the

---

<sup>4</sup> Court of Appeal (Civil) Rules 2005, r 43(1B)(a).

<sup>5</sup> Rule 43(1B). We note that in his application for an extension of time, Mr Smith asserted that the matter of security for costs is likely to be appealed to the Supreme Court. We are not aware of any such application for leave to appeal currently before the Supreme Court.

<sup>6</sup> Rule 43(3).

<sup>7</sup> *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801; and *Yarrow v Westpac New Zealand Ltd* [2018] NZCA 601 at [4]. This Court in *Yarrow* explained that, although the Supreme Court was dealing with r 29A, and not r 43, the same principles apply.

interests of justice require.<sup>8</sup> The factors that are likely to require consideration include:<sup>9</sup>

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

The merits of a proposed appeal may also in principle be relevant to the exercise of the discretion to extend time.<sup>10</sup>

[12] Mr Smith has indicated that the extension of time is required in order to determine the application for a production order. It is however unclear what rule Mr Smith relies upon for making such an application. There is no automatic right to discovery in summary judgment proceedings, which these proceedings are. Nor is there a right to discovery on appeal in the Rules. Rule 45 does, however, allow the Court to grant leave to a party to make an application for the admission of further evidence on questions of fact.<sup>11</sup> In order for further evidence to be adduced, it must, however, be fresh, credible and cogent.<sup>12</sup> It will not be fresh if it could with reasonable diligence have been produced at trial.<sup>13</sup> In summary judgment proceedings, particular weight will be accorded to the need for finality.<sup>14</sup> In any event, granting an application

---

<sup>8</sup> *Almond v Read*, above n 7, at [38].

<sup>9</sup> At [38].

<sup>10</sup> At [39].

<sup>11</sup> Court of Appeal (Civil) Rules 2005, r 45(1).

<sup>12</sup> *Erceg v Balenia Ltd* [2008] NZCA 535 at [15], citing *Rae v International Insurance Brokers (Nelson Marlborough) Ltd* [1988] 3 NZLR 190 at [192].

<sup>13</sup> *Erceg v Balenia Ltd*, above n 12, at [15], citing *Rae v International Insurance Brokers (Nelson Marlborough) Ltd*, above n 12, at [192].

<sup>14</sup> *Erceg v Balenia Ltd*, above n 12, at [15], citing *Lawrence v Bank of New Zealand* (2001) 16 PRNZ 207 (CA).

for the admission of further evidence on appeal is not the same as making an order of the kind sought by Mr Smith.

[13] Our conclusion is that even if this Court has jurisdiction to make a production order, we do not consider that such an order should be made in the context of this application. LINZ advises that Mr Smith has made a request under the Official Information Act 1982 for a copy of the email to which LINZ has responded. We assume the email would have been disclosed if it existed. Even if it does exist, however, it is highly unlikely that it would satisfy the fresh, credible and cogent test. As described by Mr Smith, the email he seeks would be a preliminary communication of very limited weight in assessing whether there was a lease agreement of some sort between Mr Smith and LINZ.

[14] Although Mr Smith made the application for an extension of time three working days after the appeal was deemed abandoned, at that point it had been just over a year since the appeal was originally filed. The year's delay was a result of Mr Smith's various applications relating to a stay of execution and waiver of security for costs. Because Mr Smith has never attempted to pay the required security, he would be unable to pursue the appeal, even if an extension were granted.

[15] LINZ has incurred costs. The delay in hearing the appeal has also prejudiced LINZ, in that LINZ has been ordered not to lease the property at issue, grant any right of possession or occupation in respect of the property at issue, or remove or alter any of the buildings on the property pending determination of the appeal.<sup>15</sup> The issues raised on the appeal do not appear to have any general significance. It also does not appear that the substantive appeal has a high level of merit. We cannot discern any obvious deficiencies in Judge Brittain's judgment.

[16] We decline Mr Smith's application for an extension of time. As the appeal has been deemed abandoned, Mr Smith's application for a production order need not be determined. It would, in any event, be declined, for the reasons we have given.

---

<sup>15</sup> *Land Information New Zealand v Smith* [2023] NZHC 2147 at [24(f)].

## **Costs**

[17] LINZ submits that ordinary scale costs for this application would exceed its actual expected costs of \$1,800. We make an order for costs limited to \$1,800 accordingly.<sup>16</sup>

## **Result**

[18] The application for an extension of time is declined.

[19] The applicant must pay costs to the respondent of \$1,800.

Solicitors:  
BVA The Practice, Palmerston North for the Respondent

---

<sup>16</sup> Court of Appeal (Civil) Rules 2005, r 53F(a).