

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA341/2023
[2023] NZCA 618**

BETWEEN KEVIN-JOHN TITO AND TUI-DOROTHY
TITO
Applicants
AND NEW ZEALAND POLICE
Respondent

Court: Courtney and Collins JJ
Counsel: Applicants in person
J P Golightly for Respondent
Judgment: 5 December 2023 at 9.00 am
(On the papers)

JUDGMENT OF THE COURT

- A The application for leave to extend time to appeal is declined.**
B The application for leave to bring a second appeal is declined.
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REASONS OF THE COURT

(Given by Collins J)

[1] On 17 June 2021, the New Zealand Police | Ngā Pirihimana o Aotearoa revoked Mr and Mrs Tito's firearms licences on the basis that they were not fit and proper persons to hold such licences. The revocation of the licences followed a threat Mr and Mrs Tito made against a Member of Parliament in 2018 and threats and abuse that they directed towards staff at the Māori Land Court and their landlord. The latter two incidents occurred in March 2021.

[2] An appeal seeking to overturn the revocation orders was dismissed by the District Court on 9 September 2022.¹

[3] Mr and Mrs Tito then sought leave to appeal to the High Court pursuant to s 296 of the Criminal Procedure Act 2011. On 24 May 2023, Campbell J declined their application and ordered Mr and Mrs Tito pay the police \$3,295.50 by way of costs.²

[4] On 28 June 2023, Mr and Mrs Tito applied for leave to appeal to this Court and for an extension of time to bring a second appeal. It is convenient to deal first with the application to bring a second appeal.

[5] Although Mr and Mrs Tito have not committed an offence their applications are governed by the Criminal Procedure Act. This is because s 64 of the Arms Act 1983 states:

64 Appeal on a question of law

- (1) Where any party to any appeal under section 62B or to any application under section 63 is dissatisfied with the decision of the District Court Judge as being erroneous in point of law, he may appeal to the High Court on the question of law only.
- (2) Subpart 8 of Part 6 of the Criminal Procedure Act 2011 applies as far as applicable with the necessary modifications to every appeal under this section.

[6] There are two reasons why the Criminal Procedure Act prevents Mr and Mrs Tito from applying for leave to pursue a second appeal to this Court.

[7] First, under s 213(3) of the Criminal Procedure Act “[a]n appeal court’s decision to give or refuse leave ... is final unless otherwise expressly provided by this Part or any other Act”.

[8] There is nothing in any Act that changes the effect of s 213(3) of the Criminal Procedure Act. Therefore, the judgment of Campbell J declining Mr and Mrs Tito leave to appeal to the High Court was final.

¹ *Tito v Police* [2022] NZDC 16431 [District Court judgment].

² *Tito v Police* [2023] NZHC 1235 [High Court judgment].

[9] Second, any possible appeal to this Court would be a second appeal. Section 303(1) of the Criminal Procedure Act states:

- (1) A party to a first appeal under this subpart may, with the leave of the second appeal court, appeal under this subpart to that court against the determination of the first appeal.

[10] In *Nottingham v District Court at Auckland*, this Court explained that a High Court decision declining leave to appeal to the High Court was not a “determination of the first appeal” for the purposes of s 303 of the Criminal Procedure Act.³

[11] In *Nottingham* it was noted that s 300 of the Criminal Procedure Act requires a first appeal court to determine a first appeal by taking any of the steps set out in s 300(1) of the Criminal Procedure Act. Declining leave is not listed as a way in which the first appeal court may determine an appeal.⁴

[12] Before we could consider granting leave to Mr and Mrs Tito, there would have had to have been a first appeal that determined their appeal from the District Court. In this case, that has not happened. There was never a determination of Mr and Mrs Tito’s proposed first appeal. It therefore follows, that absent a first appeal which determined the appeal, there cannot be a second appeal.

[13] This Court does not have jurisdiction to consider Mr and Mrs Tito’s application for leave to appeal to this Court. Accordingly, their application for an extension of time for leave to appeal is redundant and their application for leave to appeal is declined.

³ *Nottingham v District Court at Auckland* [2018] NZCA 345, [2018] NZAR 1308 at [18].

⁴ At [17].

Result

[14] The application for leave to extend time to appeal is declined.

[15] The application for leave to bring a second appeal is declined.

Solicitors:
Marsden Woods Inskip Smith, Whangārei for Respondent