

BETWEEN PONIFASIO IOANE
 Applicant

AND WAITAKERE CITY COUNCIL
 Respondent

Court: Keith and Blanchard JJ

Counsel: S R Mitchell for Applicant
 J E Latimer and A M Denton for Respondent

Judgment: 3 December 2004

JUDGMENT OF THE COURT

[1] Mr Ioane is seeking leave to appeal against the decision of the Court of Appeal, made under the Employment Contracts Act 1991, allowing an appeal by the respondent Council against a decision of the Employment Court.

[2] The Council has filed a notice of opposition to the leave application submitting that this Court has no jurisdiction in the matter. We have given counsel for Mr Ioane the opportunity to respond and, having received and considered his submissions, we are satisfied that the Council is correct and that this Court lacks jurisdiction. The matter is sufficiently clear for us to be able to decide it on the papers.

[3] Section 135 of the Employment Contracts Act 1991 provides that the determination of the Court of Appeal on any appeal under s35 “shall be final and conclusive”. Section 7(a) of the Supreme Court Act 2003 prevents this Court from hearing and determining an appeal in a civil proceeding where an enactment other than the Supreme Court Act makes provision “to the effect that there is no right of

appeal against the decision”. A statement that the determination of the Court of Appeal is to be final and conclusive is a provision to the effect that there is no right of appeal against the decision.

[4] The Supreme Court Act removed the comparable finality provision which previously appeared in s214 of the Employment Relations Act 2000 so that appeals can be brought to this Court by leave from decisions made by the Court of Appeal under s214. No amendment was made to s135, no doubt because the 1991 Act had already been repealed.

[5] Section 247 of the Employment Relations Act provides for proceedings under the Employment Contracts Act not determined at the commencement of the 2000 Act to be determined or completed by the Court of Appeal “as if this Act had not been passed”. The finality provision in s35 therefore continues to apply to such proceedings.

[6] For these reasons we cannot accept the submission made on behalf of Mr Ioane that the passage of the Supreme Court Act has in effect rendered provisions such as s35 null and void. Counsel also submitted that the legislature could not have envisaged the Mr Ioane’s rights of appeal would be restricted and that appellants under the Employment Contracts Act would be in a worse position than those appealing under the Employment Relations Act. The fact remains, however, that s135 was not amended. It may well have been considered that it would have been anomalous to confer upon the few remaining litigants under the earlier Act an additional right of appeal which had never existed under that Act, thus advantaging them merely because it happened that their cases had proceeded slowly and had not been finally determined prior to the commencement of the Supreme Court Act.

[7] Section 7(a) prevents this Court from hearing the proposed appeal. The application for leave is therefore dismissed. In the circumstances there will be no award of costs.

Solicitors:
Gubb & Partners, Auckland for Applicant
Kensington Swan, Auckland for Respondent