

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 63/2016
[2023] NZSC 27

BETWEEN CAMILLE IRIANA THOMPSON
Applicant
AND ATTORNEY-GENERAL
Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: D A Ewen for Applicant
A M Powell for Respondent

Judgment: 27 March 2023

JUDGMENT OF THE COURT

A The application for recall of this Court's judgment of 7 October 2016 (*Thompson v The Attorney-General* [2016] NZSC 134) is dismissed.

B There is no order as to costs.

REASONS

[1] On 7 October 2016, this Court declined Ms Thompson's application for leave to appeal against a decision of the Court of Appeal.¹ The Court of Appeal had dismissed Ms Thompson's appeal against a High Court decision dismissing her claim for, among other things, a declaration of a breach of s 22 of the New Zealand Bill of Rights Act 1990 (Bill of Rights) and public law compensation.²

¹ *Thompson v The Attorney-General* [2016] NZSC 134 (Arnold, O'Regan and Ellen France JJ) [SC judgment].

² *Thompson v Attorney-General* [2016] NZCA 215, [2016] 3 NZLR 206 (Wild, French and Cooper JJ) [CA judgment]; and *Thompson v Attorney-General* [2014] NZHC 2333, (2014) 10 HRNZ 51 (MacKenzie J).

[2] The Court of Appeal applied the decision of this Court in *Chapman v Attorney-General* in coming to its conclusion that no award of public law damages was available.³ In her application for leave to appeal to this Court, Ms Thompson argued that *Chapman* could be distinguished in her case. Her claim related to a breach of s 22 of the Bill of Rights, whereas *Chapman* related to breaches of ss 25 and 27 of the Bill of Rights. This Court did not accept that argument. It said:⁴

We do not consider there is sufficient likelihood that the arguments for distinguishing *Chapman* would be accepted to justify the granting of leave. Nor do we see any proper basis for revisiting *Chapman*, a relatively recent decision of this Court.

The application for leave to appeal was therefore dismissed.

[3] After this Court's judgment was issued, Ms Thompson made a communication to the United Nations Human Rights Committee (UNHRC), under the first optional protocol to the International Covenant on Civil and Political Rights (ICCPR).⁵ She alleged breaches of arts 2(3), 9(1) and 9(5) of the ICCPR by New Zealand as a result of her being arbitrarily arrested and detained and being provided with no effective remedy. The UNHRC adopted Views upholding the communication on 2 July 2021.⁶ The New Zealand Government formally responded to the Views, but did not make any commitment to provide compensation to Ms Thompson.

[4] Ms Thompson argues that the leave judgment should be recalled because the UNHRC's Views is a decision of unquestionable high authority (albeit one that is not binding on this Court) that is of central relevance to Ms Thompson's case and to wider human rights in New Zealand. She argues that, if the judgment is recalled, leave to appeal should be granted so that her arguments as to the applicability of *Chapman* on the facts of the case can be fully considered at an appeal hearing.

³ CA judgment, above n 2, at [74], citing *Attorney-General v Chapman* [2011] NZSC 110, [2012] 1 NZLR 462.

⁴ SC judgment, above n 1, at [10].

⁵ Optional Protocol to the International Covenant on Civil and Political Rights 999 UNTS 171 (opened for signature 19 December 1966, entered into force 23 March 1976).

⁶ Human Rights Committee *Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3162/2018* UN Doc CCPR/C/132/D/3162-2018 (19 November 2021).

[5] In *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd (No 2)*, this Court adopted the following test for the recall of judgments not already perfected from *Horowhenua County v Nash (No 2)*:⁷

... first, where since the hearing there has been an amendment to a relevant statute or regulation or a new judicial decision of relevance and high authority; secondly, where counsel have failed to direct the Court's attention to a legislative provision or authoritative decision of plain relevance; and thirdly, where for some other very special reason justice requires that the judgment be recalled.

[6] Ms Thompson argues that, as the UNHRC's Views is "a new judicial decision of relevance and high authority", her case comes within the first category in *Horowhenua County*. She also argues there is a "very special reason" justifying recall.

[7] We do not accept that this case comes within the first category of *Horowhenua County*. The Views is not the decision of a judicial body, and it is a decision in Ms Thompson's own case. It is not an authority in another case that has come to light shortly after the delivery of the judgment to which the recall application relates and that may have had precedent value affecting the reasoning in the judgment.

[8] Nor do we consider there is a very special reason justifying recall. The fact that over six years have passed since the leave judgment was delivered counts against recall. The important value of finality would be compromised if the Court allowed the reopening of a judgment so long after its delivery on the basis that an international body has formed the view that aspects of the Court's reasoning is incorrect.⁸

[9] We do not consider that the *Horowhenua County* test for recall of a judgment is met. This means we do not need to consider the further point raised by the respondent, namely that, unlike the judgment at issue in *Horowhenua County*, the judgment in the present case has been perfected and a stricter "exceptional circumstances" test therefore applies to a recall application.

⁷ *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC) at 633; approved in this Court by *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd (No 2)* [2009] NZSC 122, [2010] 1 NZLR 76 at [2].

⁸ The UNHRC's Views may be relevant to cases arising in the future, however.

[10] The application for recall is dismissed.

[11] As Ms Thompson is legally aided in relation to this application, we make no order as to costs.

Solicitors:
Ord Legal, Wellington for Applicant
Crown Law Office, Wellington for Respondent