

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 55/2023
[2023] NZSC 88

BETWEEN CHRISTOPHER JOSEPH O'NEILL
Applicant
AND JUDICIAL CONDUCT COMMISSIONER
Respondent

Court: Glazebrook, O'Regan and Ellen France JJ
Counsel: Applicant in person
N M H Whittington for Respondent
Judgment: 21 July 2023

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
B There is no order as to costs.
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REASONS

[1] The applicant filed an application for judicial review in the High Court, seeking review of a number of decisions made by the respondent. The Registrar of the High Court referred the proceeding to a High Court Judge under r 5.35A of the High Court Rules 2016 for consideration under r 5.35B. Rule 5.35B empowers a judge to strike out or make other directions in relation to a proceeding if satisfied the proceeding is plainly an abuse of the Court's process. The High Court Judge then issued a judgment striking out the applicant's proceeding on the basis that it was an abuse of the Court's process.¹

¹ *O'Neill v Ritchie* [2022] NZHC 1225 (Cooke J).

[2] The applicant appealed against the High Court decision to the Court of Appeal. The appeal was set down for hearing and, after the applicant did not appear, was set down for hearing again two days later. The applicant also failed to appear on the second occasion. The Court then decided to deal with the appeal on the papers and dismissed the appeal, giving its reasons a month or so later.² The Court of Appeal upheld the decision of the High Court to strike out the applicant's proceeding as an abuse of process.

[3] The applicant now applies for leave to appeal to this Court against the decision of the Court of Appeal. The application is advanced on the basis that the process adopted by the Court of Appeal was flawed, rather than on the basis that the decision that was made was wrong. The applicant says that he notified the Court of Appeal he was unable to attend on the day of the first scheduled hearing because of ill health. The Court of Appeal adjourned the hearing but required the applicant to appear two days later and also required him to supply a medical certificate. The applicant did neither. If leave is granted, he wishes to argue that the requirement for the production of a medical certificate was discriminatory and that the Court should not have required him to appear when ill. He also argues that the prevalence of diseases in the community and the consequent strains on the health system means that the Court should not have required a medical certificate within 48 hours. He does not, however, provide any detail of the illness from which he was said to be suffering or any medical evidence to support his claim.

[4] This Court must not give leave to appeal unless satisfied that it is necessary in the interests of justice to do so.³ Section 74(2) of the Senior Courts Act 2016 sets out the criteria for determining whether it is in the interests of justice to grant leave. Two are relevant in this case. The first is whether the proposed appeal involves a matter of general or public importance.⁴ We accept that the requirement for a medical certificate to be produced may meet that requirement. But the other matters the applicant wishes to raise are matters particular to the facts of his case and do not give rise to any point of public importance. Given the nature of the underlying proceedings, which on the

² *O'Neill v Judicial Conduct Commissioner* [2023] NZCA 152 (Courtney, Lang and Downs JJ).

³ Senior Courts Act 2016, s 74.

⁴ Section 74(2)(a).

concurrent findings of both the High Court and the Court of Appeal are an abuse of process, we do not consider this is an appropriate case to grant leave to consider the medical certificate point. The second relevant criterion is whether a miscarriage of justice may occur if leave is declined.⁵ Given the abuse of process involved in the proceeding, we see no appearance of a miscarriage in refusing leave to appeal.

[5] The application for leave to appeal is dismissed.

[6] The respondent was not required to file submissions and, in those circumstances, there is no order as to costs.

⁵ Section 74(2)(b).