IN THE SUPREME COURT OF NEW ZEALAND

SC 20/2006
[2006] NZSC 32

BETWEEN	MARLENE PATRICIA TE HIWI HAGGIE Applicant
AND	PIKI TAWHAKI HAGGIE Respondent

Court: Elias CJ, Tipping and Anderson JJ

Counsel: R H Warren and D Dowthwaite for Applicant
D A Bogers and S K Nepe for Respondent

Judgment: 10 May 2006

JUDGMENT OF THE COURT

A. The applications for leave to amend the application for leave to appeal and the application for leave to appeal itself are both dismissed.

B. The applicant is ordered to pay the respondent costs in the sum of $2,500.00 plus all reasonable disbursements, to be fixed if necessary by the Registrar.

REASONS

[1] This is an application for leave to appeal to this Court directly from the Family Court. That Court made orders under the Property (Relationships) Act 1976 and, in so doing, held that certain land was general land owned by Maori rather than Maori land. The applicant, Mrs Haggie, challenged that and other aspects of the Family Court's decision on an appeal to the High Court.

[2] She also wishes to appeal directly to this Court on a number of grounds, including the proposition that the Family Court had no jurisdiction to make any determination of the status of the land. The High Court appeal, which presumably put the jurisdiction issue at its forefront, was initially held over pending the decision of this Court on the present application. It has, however, now been dismissed, as we mention more fully below.

[3] The respondent contends that the Supreme Court has no jurisdiction to allow an application of this kind and, even if we had, that it should not be exercised. Section 9 of the Supreme Court Act 2003 provides that the Supreme Court can hear and determine an appeal against a decision made in a civil proceeding in a New Zealand Court other than the Court of Appeal or the High Court, to the extent only that an enactment other than the Supreme Court Act provides for the bringing of an appeal to the Supreme Court against the decision.

[4] Mrs Haggie has not identified any statutory provision which provides for an appeal directly from the Family Court to the Supreme Court, nor are we aware of any such provision. We add that even if the applicant was seeking leave to appeal from a decision of the High Court to the same effect as that of the Family Court, it is unlikely the case would qualify for a leapfrog appeal, bypassing the Court of Appeal under s 14. If this present matter was discretionary, we would certainly not entertain the appeal without the benefit of the views of at least the High Court.

[5] We have just learnt, following the filing on 4 May 2006 of an application for leave to amend the application for leave to appeal to this Court, that the High Court appeal was dismissed, effectively by consent, on 6 April 2006. The application to amend in this Court now seeks to put in issue, by direct appeal to this Court, not only the original Family Court decision but also the decision of the High Court dismissing the appeal from the Family Court. The applicant's wish to challenge the decision of the High Court as well as that of the Family Court, does not, in present circumstances, make the case for leave any stronger.

[6] In paragraph [6] of the oral judgment of Heath J, in the course of which he dismissed the appeal from the Family Court, the Judge said:

> The basis for the present application is put on the need to preserve property said to be at risk pending determination of any appeal that might be permitted by the Supreme Court. The appellate jurisdiction of the Supreme Court has been invoked because of a perceived need to review the approach of New Zealand Courts to the status of Maori customary land. It is accepted that this Court, on appeal, would have been bound to follow the same approach taken in the Family Court so the appeal initially brought to this Court will not be pursued. That appeal is, therefore, dismissed.

[7] That basis for the dismissal of the High Court appeal affords no ground for an appeal directly from the High Court to this Court. The more is this so because the Judge recorded that the dismissal followed the acceptance to which he referred. That must have been a reference to the stance taken by counsel then appearing for the present applicant in the High Court. There is no basis for any grant of leave to amend the application in this Court because, even if it was amended as suggested, it could not possibly succeed.

[8] For these reasons the application for leave to appeal and the application to amend it should both be dismissed, with costs to the respondent in the sum of $2,500 plus all reasonable disbursements, to be fixed if necessary by the Registrar.

Solicitors:
David Dowthwaite & Co, Rotorua for Applicant
Bogers Scott and Shortland, Hamilton for Respondent