

IN THE SUPREME COURT OF NEW ZEALAND

**SC 59/2009
[2009] NZSC 79**

BETWEEN KANE WIKIO
 First Applicant

AND BUNNY BECKHAM
 Second Applicant

AND THE ATTORNEY-GENERAL
 Respondent

Court: Blanchard, McGrath and Wilson JJ

Counsel: T Ellis for Applicants
 T Warburton for Respondent

Judgment: 23 July 2009

JUDGMENT OF THE COURT

The applications for leave to appeal are dismissed.

REASONS

[1] The applicants challenged in civil proceedings the composition of the Courts which heard their earlier criminal proceedings. They now seek leave to appeal against a judgment of the Court of Appeal¹ dismissing their applications under r 43(2) of the Court of Appeal (Civil) Rules 2005 to extend the time to file a Case on Appeal and to apply for a date of hearing of the civil proceedings.

¹ [2009] NZCA 221.

[2] The Court of Appeal refused to extend time because it thought that there was no realistic prospect that the applicants would be able to pursue their appeal after their counsel, Mr Ellis, had advised the Court that the Legal Aid Review Panel had upheld the decision of the Legal Services Agency to decline legal aid for the appeal and that he was not minded to proceed on a *pro bono* basis. The Court also noted that each of the applicants had already had the benefit of a previous appeal, at which each was represented by counsel, and that Mr Beckham had unsuccessfully sought leave from the Privy Council to appeal there.

[3] In his submissions to this Court, Mr Ellis did not attempt to challenge the conclusion of the Court of Appeal that there was no realistic prospect of the appeal being pursued. It must follow that there is no basis on which the exercise by that Court of its discretion so as not to extend time can be challenged on appeal to this Court. The applications for leave to appeal are therefore dismissed. The Court of Appeal made no order as to costs. Nor do we.

Solicitors:
Nat Dunning Law, Wellington for Applicants
Crown Law, Wellington for Respondents