

IN THE SUPREME COURT OF NEW ZEALAND

[2011] NZSC 79

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| BETWEEN | A PERSON OR PERSONS UNKNOWN First Applicant |
| AND | NGAI-TUPANGO-HAPU INC Second Applicant |
| AND | TEA CUSTODIANS (BLUESTONE) LIMITED Respondent |

Judgment: 1 August 2011

JUDGMENT OF McGRATH J

- A The Registrar’s decision refusing to waive the filing fee is set aside.**
- B The Registrar is directed to return the application for leave to appeal as one not raising a matter within this Court’s jurisdiction.**

REASONS

[1] On 23 June 2011 the Registrar received an application on behalf of interlocutory appellants, who it seems include unknown persons said to be occupying a property in Takanini, for leave to bring a civil appeal against a judgment of the Court of Appeal refusing to grant an extension of time to file a case on appeal and to allocate a hearing date.¹ The effect of that judgment is that the appeal is deemed to be abandoned under r 43(1) of the Court of Appeal Rules.

[2] The application for leave was described as “Notice of Claim (application) for leave to bring civil claim (appeal)”. This Court also received at the same time an

¹ *A Person or Persons Unknown and Ngai-Tupango-Hapu Inc v Tea Custodians (Bluestone) Ltd* [2011] NZCA 226.

application for waiver of the filing fee on the application. The opening paragraph of the Notice states:

We, :Te-Awhina and :Kingi-Kingi-Hori: Kingi the Kaitiaki of the Ngai-Tupango-Hapu-Inc., claimants (appellants) in the proceeding identified above, give notice that we claim (apply) for the leave of the Supreme Court to claim (appeal) to the Court against the judgment of Judges Arnold, Stevens and Wild JJ, made in the Court of Appeal of New Zealand, Friday 27th May 2011, in matters CA280/210 [2011] NZCA 226.

[3] The remainder of the document outlines a number of grounds essentially asserting lack of jurisdiction by the Court of Appeal over the land involved in the underlying dispute. No attempt is made to address the matters decided by the Court of Appeal in relation to the refusal of an extension of time.

[4] The Registrar wrote on 23 June 2011 to Ms Bongard, a lay person who had represented the appellants in the Court of Appeal, refusing the application for fee waiver because he saw no connection between her and the named parties to the litigation. Ms Bongard, who is also known as Te Awhina, has sought a review of that refusal and this is the decision on that application.

[5] I am satisfied that the course followed by the Registrar was procedurally incorrect. Prior to addressing the fee waiver application, he should have considered the application for leave to appeal. While in form it is expressed as an application for leave to appeal against the Court of Appeal's judgment, in substance it does not address any of the matters decided by that judgment. Indeed it is not a challenge to the Court's reasoning and decision at all. The applicants named rather seek that the Court give leave to appeal on a basis that will allow incoherent constitutional theories of the named applicants in particular to be argued.

[6] This Court only has jurisdiction to hear an appeal against the Court of Appeal's judgment. As the matters addressed in that judgment are not touched on by the application, which is entirely concerned with collateral matters, there is no jurisdiction to hear the proposed appeal. On that ground alone the Registrar should have rejected the application for leave. Once that is done, there is no basis for the fee waiver application.

[7] To correct the position, I set aside the Registrar's decision refusing to waive the filing fee. I also direct the Registrar to return the application as one which on its face does not raise a matter within the Court's jurisdiction.