

IN THE SUPREME COURT OF NEW ZEALAND

[2013] NZSC 110

BETWEEN

VINCENT ROSS SIEMER
Applicant

AND

MICHAEL PETER STIASSNY & ANOR
Respondents

BETWEEN

VINCENT ROSS SIEMER
Applicant

AND

JUDICIAL CONDUCT
COMMISSIONER
First Respondent

SIAN SEERPOOHI ELIAS
Second Respondent

PETER BLANCHARD
Third Respondent

JOHN McGRATH
Fourth Respondent

WILLIAM YOUNG
Fifth Respondent

ANDREW TIPPING
Sixth Respondent

Counsel: Applicant in person

Judgment: 14 November 2013

JUDGMENT OF GLAZEBROOK J

The applications are dismissed.

REASONS

[1] Mr Siemer has filed two applications for review, under s 28(3) of the Supreme Court Act 2003, of decisions of the Supreme Court Registrar not to accept the applications discussed at [2] for filing.

Background to the applications

[2] In early September 2013, Mr Seimer presented for filing two applications for leave to appeal to this Court against two decisions of the Registrar of the Court of Appeal.¹

[3] The Registrar of the Court of Appeal had in both cases refused to accept applications for a direct ruling by a judge of that Court to dispense with security for costs.² The Registrar's refusal was on the basis that there is no provision for a party to bypass the procedure in the Court of Appeal (Civil) Rules 2005 relating to security for costs.

[4] On 6 September 2013 the Registrar of this Court rejected Mr Siemer's applications to this Court (referred to at [2] above) on the basis that there was no jurisdiction to accept them. The Registrar indicated that his view that there was no jurisdiction had been endorsed by Arnold J.

¹ The decisions of the Registrar of the Court of Appeal related to applications in the appeals in *Siemer v Stiassny* CA 429/2013; and *Siemer v Judicial Conduct Commissioner* CA 452/2013. CA 429/2013 was an appeal against High Court decision *Siemer v Stiassny* [2013] NZHC 1567, in which Toogood J awarded costs against Mr Siemer in relation to an earlier recall decision. CA 452/2013 was an appeal against High Court decision *Siemer v Judicial Conduct Commissioner* [2013] NZHC 1655, in which Williams J struck out judicial review proceedings brought by Mr Siemer.

² With regard to *Siemer v Stiassny*, above n 1, the letter was dated 16 August 2013. With regard to *Siemer v Judicial Conduct Commissioner*, above n 1, the letter was dated 12 August 2013.

[5] On 9 September 2013, after more e-mail correspondence from Mr Siemer, the Registrar further explained his decision. He informed Mr Siemer that the Supreme Court has no original jurisdiction and can only accept for filing applications for leave to appeal pursuant to ss 7 to 10 of the Supreme Court Act. As the decisions were by the Registrar of the Court of Appeal, not by the Court of Appeal itself, the Registrar's view was that there was no jurisdiction to accept Mr Siemer's applications.

These applications

[6] Mr Siemer has applied, under s 28(3) of the Supreme Court Act, for a review of the decision that there is no jurisdiction to accept his applications.

[7] It does not appear that Arnold J's endorsement of the Registrar's view that there was no jurisdiction was intended to be a review under s 28(2) of the Supreme Court Act. Consequently, s 28(3) does not yet arise. I will therefore deal with the review applications under s 28(2) of the Supreme Court Act.

My assessment

[8] Rule 35(5) of the Court of Appeal (Civil) Rules sets the amount of security for costs that must be paid with regard to any appeal to the Court of Appeal. Rule 35(2) sets the timing of payment.

[9] Any application to dispense with security for costs or to vary the amount or timing of payment³ must be made to the Registrar of the Court of Appeal under r 35(7). This means that all appellants in Mr Siemer's position must, if they wish to make an application to dispense with security for costs, apply to the Registrar of the Court of Appeal.

[10] Because the powers relating to security for costs are, under r 35(7), conferred on the Registrar, appellants cannot apply for an order directly to a judge of the Court of Appeal under s 61A(1) of the Judicature Act 1908.⁴ However, the Registrar's

³ See Court of Appeal (Civil) Rules 2005, r 35(6).

⁴ I acknowledge that a single judge of the Court may have the power under s 61A(1) of the

decision on security for costs (if adverse to an appellant) would be reviewable under s 61A(3) of the Judicature Act by a judge of the Court of Appeal.

[11] If the decision on review is still adverse to an appellant, it is only at that stage that there is an ability to apply for leave to appeal to this Court. There is no right to apply to this Court for leave to appeal against a decision of the Registrar of the Court of Appeal relating to security for costs. Mr Siemer must complete the process in the Court of Appeal before he can apply for leave to appeal to this Court.⁵

[12] The decision of the Registrar of this Court to refuse Mr Siemer's applications was therefore correct.

Result

[13] Mr Siemer's applications for review of the Registrar's decisions are dismissed.

[14] A copy of this judgment is to be sent to all counsel for the respondents in CA 429/2013 and CA 452/2013.

Judicature Act 1908 to make an order relating to security for costs where no decision has been made by the Registrar. Even if that power exists, however, it does not mean that a judge must exercise it if an application is made. The Court of Appeal is entitled to require appellants to follow the procedures in the Court of Appeal (Civil) Rules and make application to the Registrar under r 35(7).

⁵ *Harrison v Auckland District Health Board* [2013] NZSC 98 at [6].