

IN THE SUPREME COURT OF NEW ZEALAND

[2013] NZSC 72

BETWEEN

RAZDAN RAFIQ
Applicant

AND

THE CHIEF EXECUTIVE OF THE
MINISTRY OF BUSINESS,
INNOVATION AND EMPLOYMENT
Respondent

Judgment: 18 July 2013

JUDGMENT OF GLAZEBROOK J

- A The application for review of the Registrar's decision is dismissed.**
- B The Registrar's decision not to waive the filing fee is confirmed.**
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REASONS

Introduction

[1] Mr Rafiq wishes to seek leave to appeal against a decision of Stevens J¹ refusing his application for review of the decision of the Registrar of the Court of

¹ *Rafiq v The Chief Executive of the Ministry of Business, Innovation and Employment* [2013] NZCA 243.

Appeal declining to waive the filing fee in relation to an appeal against a decision of Priestley J.²

[2] Mr Rafiq applied to the Registrar of this Court for a waiver of the filing fee with regard to his application for leave to appeal. By letter of 8 July 2013 that application was refused. Mr Rafiq now applies for a review of the Registrar's decision.

The Registrar's decision

[3] The Registrar was not satisfied, from the details supplied by Mr Rafiq, that he would suffer undue financial hardship in terms of reg 5(3)(b)(iii) of the Supreme Court Fees Regulations 2003.

[4] In particular, the Registrar noted that no details of the nature of Mr Rafiq's employment had been given. The Registrar also noted the following:

- (a) Payments to online auction sites – Trademe and Wheedle;
- (b) Payments to Mylotto.co.nz;
- (c) What appears to be almost daily payments to fast food outlets, for example, McDonalds, KFC and Burger King.

[5] The Registrar said further that Mr Rafiq had not explained the nature of the regular payments to Ray Khan. He noted that in the High Court judgment in CRI-2012-404-360,³ Mr Rafiq was also known by the name of Khan.

[6] The Registrar also referred to Mr Rafiq's student loan statement issued on 6 June 2012. In the period of the statement 16 October 2012 to 6 June 2013, loan

² *Rafiq v The Chief Executive of the Ministry of Business, Innovation and Employment* [2013] NZHC 1134.

³ *Khan v Police* HC Auckland CRI-2012-404-360, 13 December 2012. In these proceedings Mr Rafiq unsuccessfully sought leave to appeal a decision of Courtney J dismissing an appeal by Mr Rafiq against convictions under the Postal Services Act 1998.

repayments of \$4,409.25 were made. The Registrar considered that this indicated income of a reasonable amount or access to other funds.

Further information provided

[7] Mr Rafiq has provided some further details in his application for review. He says that he had a small scale business in 2011 but that he is no longer in business “but selling his products cost to cost[sic] to recover his investment”. He does not set out the level of his earnings or why he has not sought other employment.

[8] Mr Rafiq admits that he has a secondary account under the name of Khan but denies that this holds substantial sums of money. He provides a copy of a bank statement. The balance as at 13 July 2013 was \$211.91. I note that there was a deposit of \$1,000 on 10 June 2013. No explanation has been given as to the source of that deposit.

[9] Mr Rafiq says the Registrar was wrong to conclude that he had access to income or funds because of the student loan repayment. Mr Rafiq has now provided information that shows this was a refund of fees to Studylink when Mr Rafiq pulled out of a flying course. I thus accept his submission that this repayment cannot be linked to Mr Rafiq having other funds or income available to him.

[10] Mr Rafiq has also provided a copy of an application to adjudicate him bankrupt to be heard in the High Court on 1 August 2013 with regard to a debt of \$13,654.41.

Assessment

[11] I have reviewed the materials supplied by Mr Rafiq to the Registrar and for his application for review of the Registrar’s decision.

[12] First, Mr Rafiq alleges in his grounds of review that the Registrar is racist. He, however, provides no material to substantiate that allegation. I therefore put this allegation to one side.

[13] Mr Rafiq has still not provided sufficient information about his employment. He has stated on previous occasions that he is self employed but makes no profits and files no tax returns. I note, however, that there have been cash deposits made into Mr Rafiq's accounts. No explanation as to their source has been provided.

[14] Taking into account the matters before the Registrar (apart from the student loan repayment) and the paucity of information as to Mr Rafiq's sources of income (actual or potential), Mr Rafiq has failed to show that he would suffer undue hardship were he to be required to pay the filing fee.

Result

[15] The application for review of the Registrar's decision is dismissed. The decision not to waive the filing fee is confirmed.