

**ORDER PROHIBITING PUBLICATION OF NAMES, ADDRESSES OR
IDENTIFYING PARTICULARS OF SECOND, THIRD AND FOURTH
RESPONDENTS.**

IN THE SUPREME COURT OF NEW ZEALAND

**SC 23/2013
[2013] NZSC 98**

BETWEEN

PAULINE JANICE HARRISON
First Applicant

ANGELA JANICE HARRISON
Second Applicant

AND

AUCKLAND DISTRICT HEALTH
BOARD
First Respondent

HEALTH AND DISABILITY
COMMISSIONER
Fifth Respondent

CORONIAL SERVICES UNIT
Sixth Respondent

Court: McGrath, William Young and Glazebrook JJ

Counsel: Applicants (in Person)

Judgment: 15 October 2013

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] This application for leave to appeal is brought against the decision of a Judge of the Court of Appeal who, on review of a decision of the Registrar of that Court, upheld her refusal to dispense with security for costs.¹ Leave is also sought to

¹ *Harrison v Auckland District Health Board* CA723/2012, 31 January 2013 [*Harrison* (security for costs)].

appeal against the determination of the Registrar and the underlying judgment of the High Court striking out the proceeding.

[2] The applicants are the sister and niece of the late Mr Malcolm Harrison who died in hospital in October 2007. They brought a proceeding against persons involved in the treatment of the deceased as well as others who later investigated the circumstances of his death. The applicants are not personal representatives of the estate of Mr Harrison, the executor of which filed an affidavit in the proceedings saying that he did not support their claims.

[3] On 15 October 2012 an Associate Judge struck out the proceeding, holding that the statement of claim was an abuse of the process of the Court.² He said it disclosed no reasonably arguable cause of action, was prolix, unintelligible and contained scandalous and irrelevant material. The plaintiffs also lacked standing and would have been unlikely to succeed in any recast proceedings.

[4] The applicants filed a notice of appeal in the Court of Appeal and on 12 November 2012 security of costs was fixed by the Registrar at \$35,280. The applicants then applied under Rule 35 of the Court of Appeal (Civil) Rules 2005, for an order dispensing with the security of costs which the Registrar declined, although reducing the amount fixed as security to \$29,400.

[5] The applicants then sought review by a Judge of the Registrar's decision. Wild J decided, in agreement with the Registrar, that the only basis on which an order dispensing with security ought to be made was if the appeal raised a question of public interest.³ He did not consider there was any real public interest in the appeal let alone such public interest as would warrant dispensing with security. Wild J accordingly upheld the Registrar's decision.

[6] The applicants now seek leave to appeal against the judgment of the Associate Judge and the decision of Wild J. They also wish to appeal against the Registrar's decision. There is, however, no jurisdiction for such an appeal. This

² *Harrison v Auckland District Health Board* [2012] NZHC 2693.

³ *Harrison* (security for costs), above n 1, at [8].

Court can hear and determine appeals against any decisions made in civil proceedings in the Court of Appeal, under s 7 of the Supreme Court Act 2003. But Parliament cannot have envisaged that this jurisdiction would extend to decisions by a Registrar which are reviewable by, and subsumed in the decision of, a Court of Appeal Judge.

[7] In their submissions the applicants have reiterated their objection to being required to give security of costs. They take the view that this is obstructive of the interests of justice and oppressive in their case. In terms of the merits of their application and the proposed appeal they argue that they should not have to give security for costs, because the case is one of public importance involving the exposure of incorrect post-mortem reporting and medical practice.

[8] We are not satisfied that the circumstances of the proposed appeal to the Court of Appeal raise any question of public interest that would warrant dispensing with security for costs under the power given by r 35(6)(c) of the Court of Appeal (Civil) Rules. We see no indication of apparent merit in the appeal against the High Court judgment. In those circumstances we see no reason why the respondents should be put to the expense of arguing the appeal without some protection for costs. We have no jurisdiction to hear a direct appeal against the Registrar's decision. The proposed direct appeal against the High Court cost judgment does not raise an issue that meets the criteria for a direct appeal to this Court. Overall, we are not satisfied that it is necessary in the interests of justice for the Court to hear and determine an appeal against refusal of security for costs or against the High Court judgment.

[9] For these reasons the application is dismissed. As a Judge of this Court directed that the respondents need not file submissions unless they were requested we make no order as to costs.