IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 98/2019
[2019] NZSC 128

BETWEEN	MALCOLM EDWARD RABSON Applicant
AND	JUDICIAL CONDUCT COMMISSIONER Respondent

Court:	Glazebrook, O'Regan and Ellen France JJ
Counsel:	Applicant in person N M H Whittington and M A Hori Te Pa for Respondent
Judgment:	18 November 2019

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The Supreme Court of New Zealand is removed as a proposed party from this proceeding.

C Mr Rabson is to pay costs of $250 to the Crown Law Office.

REASONS

Introduction

[1] In a judgment delivered on 11 September 2019, Cooke J struck out a claim for judicial review brought by the applicant, Mr Rabson.[1] Mr Rabson seeks leave to appeal direct to this Court from that decision. The Judicial Conduct Commissioner (the Commissioner) abides the decision of the Court on the application for leave.

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1 *Rabson v Judicial Conduct Commissioner* [2019] NZHC 2279 [HC judgment].

Background

[2] The background is set out in the judgment of Cooke J.[2] For present purposes we need only note the points which follow.

[3] The present application relates to the third in a series of judicial review applications challenging decisions of the Commissioner. In the first of these judicial review applications, five Judges of this Court including William Young and O'Regan JJ were named as respondents. On the application of the Crown Law Office acting as counsel for the Judges, the Judges were removed as respondents and Faire J later ordered Mr Rabson to pay costs of $777.50 in respect of this step.[3] Faire J subsequently struck out the judicial review application as an abuse of process.[4]

[4] The second application for judicial review in this series followed on from a decision of this Court dismissing an application for leave to appeal filed by Mr Rabson as an abuse of process.[5] The panel dealing with this application comprised of Elias CJ, William Young and O'Regan JJ.

[5] Mr Rabson complained to the Commissioner that William Young and O'Regan JJ were two of the judges who he had initially named as respondents. He claimed the Judges were beneficiaries of the costs award of $777.50 and should not have dealt with his application for leave. The Commissioner dismissed the complaint under ss 16(1)(a) and (d) of the Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 (the JCC Act).

[6] Mr Rabson then attempted to file the second judicial review proceeding. The proceeding was not accepted for filing by the High Court. Cooke J exercised the power under r 5.35B of the High Court Rules 2016 to dismiss the proceeding as an abuse of process on the basis it was relitigating the earlier proceeding struck out by Faire J.[6]

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2 At [3]–[12].
3 *Rabson v Judicial Conduct Commissioner* HC Wellington CIV-2017-485-133, 8 June 2017.
4 *Rabson v Judicial Conduct Commissioner* [2017] NZHC 1249.
5 *Rabson v Young* [2017] NZSC 146. Mr Rabson sought leave to appeal from a decision of French J upholding a decision not to dispense with security for costs: *Rabson v Judicial Conduct Commissioner* [2017] NZCA 349.
6 *Rabson v Judicial Conduct Commissioner* [2018] NZHC 2053.

[7] Mr Rabson's response was to simply file another judicial review proceeding, the third in this series, canvassing the same issues. On this occasion the proceeding was accepted for filing. It was struck out by Cooke J on the application of the Commissioner on the basis it was an abuse of process.[7]

[8] In reaching the decision a strike-out was appropriate, Cooke J accepted there was some merit in Mr Rabson's argument as to the scope of s 8(2) of the JCC Act. That provision provides, amongst other matters, that it is not a function of the Commissioner to call into question the correctness of any judgment or other decision made by a judge in respect of any legal proceedings. But the Judge considered that argument took Mr Rabson nowhere when he was seeking to relitigate a proceeding which had already been finally determined. Accordingly, the "central consideration" was that "Mr Rabson is seeking to relitigate … what has already been finally determined against him in other proceedings on more than one occasion".[8] In any event, Cooke J took the view that the Commissioner's decision was not "solely, or even principally" based on the jurisdictional exclusion in s 8(2).[9]

The proposed appeal

[9] Mr Rabson wishes to argue the strike-out was unlawful particularly where the Judge had accepted his argument had some merit. He says the principles governing strike-out in *Attorney-General v Prince & Gardner* have not been applied to his case.[10]

[10] Nothing raised by Mr Rabson provides exceptional circumstances that would justify a direct appeal to this Court.[11] There is no challenge to the relevant principles applicable to a strike-out so no question of general or public importance arises. Rather, the proposed appeal would be fact-specific. Nor, given the history of the proceeding, does anything Mr Rabson raises give rise to the appearance of a miscarriage of justice.[12] In any event, Crown counsel advise that Mr Rabson filed a notice of appeal

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7 HC judgment, above n 1.
8 At [14].
9 At [20].
10 *Attorney-General v Prince & Gardner* [1998] 1 NZLR 262 (CA) at 267–268.
11 Senior Courts Act 2016, s 75.
12 Senior Courts Act, s 74(2)(b); and *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [4]–[5].

in the Court of Appeal at the same time as the present application for a direct appeal was filed. The criteria for leave to appeal have not been met.

Proposed second respondent

[11] In the application for leave to appeal to this Court, Mr Rabson seeks to add this Court as the second respondent. The Crown Law Office sought a direction under r 5 of the Supreme Court Rules 2004 removing the Supreme Court as a proposed party on the following grounds:

> 3.1 the Supreme Court was not named as a party in the High Court;
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> 3.2 the underlying application challenges a decision of the first respondent, the … Commissioner. If is for the … Commissioner to respond to that challenge;
>
> 3.3 the appeal does not seek any relief against the Supreme Court;
>
> 3.4 naming the Supreme Court is vexatious, and an abuse of the Court's process. [Mr Rabson] is aware that naming the Supreme Court in this way is improper.
>
> (footnote omitted)

[12] An order removing the Court as a party is appropriate for the reasons advanced and an order is made accordingly. The Crown Law Office sought costs in relation to the memorandum filed seeking a direction removing this Court. In the circumstances, where Mr Rabson is aware this step is not appropriate in this case, costs should follow. Mr Rabson is to pay costs of $250 to the Crown Law Office.

[13] The application for leave to appeal is dismissed.

Solicitors:
Meredith Connell, Wellington for Respondent
Crown Law Office, Wellington for Supreme Court of New Zealand