IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 48/2019
[2019] NZSC 67

BETWEEN	DWAYNE RUSSELL WARAKIHI MAAKA SMYTH-DAVOREN Applicant
AND	ELIZABETH II ALEXANDRA MARY MOUNTBATTEN (BORN WINDSOR) Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: Applicant in person
V McCall for Respondent

Judgment: 1 July 2019

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B No order for costs.

REASONS

[1] Mr Smyth-Davoren seeks leave to appeal to this Court against two decisions of the Court of Appeal. In the first of these decisions, Williams J declined an application for review of the Registrar's decision refusing to dispense with security for costs.[1] In the second decision, the Court of Appeal declined to grant Mr Smyth-Davoren an extension of time necessary to allow his appeal to continue.[2]

---

1 *Smyth-Davoren v Mountbatten* [2018] NZCA 524 [CA (Williams J)].

2 *Smyth-Davoren v Mountbatten* [2019] NZCA 186 (Brown and Courtney JJ) [CA (extension of time)].

[2] The background to these two decisions is set out in the judgment of Williams J. As the Judge explained, Mr Smyth-Davoren had filed two proceedings in the High Court. Whata J struck out one of those proceedings (described as proceeding 0174) and stayed the second (proceeding 0178) in a minute dated 25 June 2018.[3] Proceeding 0174 was struck out as "largely incoherent and an abuse of process".[4] Williams J said the claim, to the extent discernible, was for "a ruling from the High Court that [Mr Smyth-Davoren] was not a person for the purposes of New Zealand law and so not subject to it".[5]

[3] Of proceeding 0178, Williams J said it was not, in the view of Whata J, "quite so incoherent".[6] Rather, it sought:[7]

> … assistance to identify and determine rights of inheritance to lands, including orders for searching of the files of named Government and other agencies together with costs. In the case of this proceeding, the Judge directed the pleadings be served on Crown Law with an invitation to identify appropriate defendant or defendants. The Judge stayed the proceeding pending Crown Law's response and the necessary amendments to the pleadings in light of that response.

[4] Mr Smyth-Davoren appealed the decision of Whata J to the Court of Appeal. He sought dispensation from payment of security for costs. When that application was declined by the Registrar, he sought a review by a Judge. In declining the review, Williams J was prepared to proceed on the basis that Mr Smyth-Davoren was impecunious. But the Judge agreed with the Registrar that Mr Smyth-Davoren had no prospects of success in his appeal. Applying the principles set out by this Court in *Reekie v Attorney-General*, Williams J said neither appeal was one a solvent appellant would wish to pursue.[8] Proceeding 0174 was as described by Whata J. On proceeding 0178, Williams J made the point the only order made by Whata J was procedural and that order was "both sensible and of real assistance to [Mr Smyth-Davoren]. There is no prospect that it would be overturned on appeal".[9]

---

3 *Smyth-Daveron v Mountbatten* HC Hamilton CIV-2018-419-174, 25 June 2018.
4 CA (Williams J), above n 1, at [3].
5 At [2].
6 At [4].
7 At [4].
8 At [6]–[8], citing *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737.
9 At [9].

[5] In declining to grant an extension of time, the Court of Appeal described the bulk of the material in relation to the application for an extension of time and the notice of appeal as "incoherent".[10] The Court considered the appeal was "frivolous and vexatious".[11]

[6] As the submissions for the respondent record, the application for leave to appeal to this Court does not set out any basis on which the criteria for leave to appeal to this Court might be met.[12] No question of general or public importance arises and there is no appearance of a miscarriage of justice arising from the Court of Appeal's assessment in the two decisions for which leave is sought.[13]

[7] The application for leave to appeal is dismissed. It is not necessary to deal with the application to dispense with security for costs in this Court. In the circumstances we make no order for costs.

Solicitors:
Crown Law Office, Wellington for Respondent

---

10 CA (extension of time), above n 2, at [12].
11 At [14].
12 Senior Courts Act 2016, s 74(2).
13 Section 74(2)(b). See *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [4]–[5].