

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 116/2020
[2021] NZSC 12

RE

VINCENT ROSS SIEMER
Applicant

Court: William Young, O'Regan and Ellen France JJ

Counsel: Applicant in person

Judgment: 1 March 2021

JUDGMENT OF THE COURT

A The application to appoint an amicus curiae is declined.

B The application for leave to appeal is dismissed.

REASONS

The application

[1] The applicant seeks leave to appeal from a Court of Appeal decision striking out what purported to be an appeal against a minute of 28 February 2020 of Palmer J. The Court concluded that the minute did not relevantly contain a “judgment, decree or order” and was thus not amenable to appeal.¹

The background

[2] On 4 March 2016, the Court of Appeal made a general order under s 88B of the Judicature Act 1908 restricting the applicant from commencing proceedings in the

¹ *Re Siemer* [2020] NZCA 393 (Miller, Brown and Gilbert JJ) [CA judgment].

High Court without the leave of the High Court.² Wishing to issue judicial review proceedings, the applicant applied for leave. This application was dealt with by Palmer J. In a judgment delivered on 25 November 2019, that Judge held that the order against the applicant had expired in March 2019 by reason of the time limits which apply to orders made under the Senior Courts Act 2016 pursuant to the regime which replaced the vexatious litigant provisions of the Judicature Act 1908.³ The Judge, however, indicated that he was “minded to make” an order under s 169(3) of the Senior Courts Act against the applicant restricting his ability to issue proceedings.⁴ He gave reasons why he was so minded.⁵ He invited submissions from the applicant and the Attorney-General and, in the meantime, directed that if the anticipated judicial review proceeding was filed, it would be stayed pending resolution of the s 169 issue.⁶

[3] As it turned out, the Attorney-General did not file submissions in relation to s 169 and the applicant chose not to pursue the judicial review which was the subject matter of his original application. The upshot was that in a minute of 28 February 2020, Palmer J, under the heading “Decision”, recorded:

I have concluded there is an insufficient basis on which I would be justified in making orders under s 166 of the Senior Courts Act 2016. I do not consider it would be fair to Mr Siemer to put this process on hold for an indeterminate period. That is particularly given that Mr Siemer has said he intends to amend the appeal proceeding so as to avoid the issue of whether he is a vexatious litigant.

The reference to “amend the appeal proceeding” warrants brief explanation. There is a conflicting decision of the High Court as to whether the applicant’s status as declared vexatious litigant and consequential restrictions on issuing proceedings still subsist. In respect of this judgment, the applicant had sought leave to appeal to the Court of Appeal. The applicant had also indicated a wish to appeal against the 25 November 2019 judgment of Palmer J in respect of the invocation of the s 166 procedure. In context it appears that the reference to “amend the appeal proceeding” is a reference to the anticipated appeal against the 25 November 2019 judgment.

² *Siemer v Attorney-General* [2016] NZCA 43.

³ *Siemer v New Zealand Law Society* [2019] NZHC 3075.

⁴ At [3] and [32].

⁵ At [30]–[32].

⁶ At [33].

[4] As it happened, the only appeal filed by the applicant was in respect of the minute of 28 February 2020, albeit that amongst the relief sought by the applicant was the setting aside of the stay provided for contingently in the 25 November 2019 judgment.

[5] In the judgment now under challenge, the Court of Appeal concluded that neither the judgment of 25 November 2019 nor the minute of 28 February 2020 determined any issue in a way which was adverse to the applicant.⁷ It followed that there was no “judgment, decree, or order” of the High Court that was adverse to the applicant and sufficient to found jurisdiction for an appeal to the Court of Appeal under s 56 of the Senior Courts Act.

[6] The applicant’s attempt to challenge the Court of Appeal judgment has already resulted in one decision in this Court, the judgment of O’Regan J in *Re Siemer*, which dismissed the applicant’s challenges to the refusal of the Deputy Registrar to waive the filing fee in respect this application.⁸

Analysis

[7] The only aspect of what happened in the High Court which could sensibly be seen as a determination adverse to the applicant was the stay of the then anticipated judicial review proceedings. As it turned out, the applicant decided not to pursue those proceedings and, in any event, that stay plainly lapsed on 28 February 2020. An appeal in respect of a stay of a claim that was not to be pursued and had in any event lapsed is simply not a viable candidate for either an extension of time to appeal or for a grant of leave to appeal to the Court of Appeal under s 56(3) of the Senior Courts Act.

[8] Apart from the reference to a stay, there was, in the judgment, a finding in favour of the applicant (that the Court of Appeal order against him had lapsed), a statement of what the Judge was “minded” to do (that is, make an order against the applicant), the reasons which motivated the Judge to say that and an invitation to the Attorney-General and the applicant to make submissions. In the minute, there is a

⁷ CA judgment, above n 1, at [26].

⁸ *Re Siemer* [2020] NZSC 136.

decision not to take the matter any further. None of this provides a jurisdictional basis for an appeal. In none of this is there a determination adverse to the applicant.

Decision

[9] The applicant sought the appointment of an amicus curiae. On the basis of the conclusions we have reached, there is no occasion for such an appointment. The application for leave to appeal is dismissed.