IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 126/2021
[2021] NZSC 147

IN THE MATTER OF Application by DERMOT GREGORY NOTTINGHAM and ROBERT EARLE MCKINNEY

Court: William Young, Ellen France and Williams JJ

Counsel: Applicants in person

Judgment: 3 November 2021

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicants filed an application and annexures with the Registry seeking various orders, including declarations about compliance by a range of institutions with the International Covenant on Civil and Political Rights[1] and the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights,[2] and as to various aspects of the Government's response to COVID-19.

[2] The Registrar advised the applicants by letter of 4 October 2021 that the application was not accepted for filing. The reason for rejection was that the Supreme Court was an appellate court with jurisdiction to consider applications for leave to

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1 International Covenant on Civil and Political Rights 999 UNTS 171 (opened for signature 16 December 1966, entered into force 23 March 1976).

2 American Association for the International Commission of Jurists *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights* (April 1985).

appeal the decisions of other New Zealand courts within its jurisdiction. The Registrar considered the application did not come within that jurisdiction.

[3] Dissatisfied with this response, the applicants applied for "review" of the Registrar's decision. In accordance with the procedure described by this Court in *Slavich v R*, the Registrar referred the application and the other documents filed to a panel of leave judges.[3]

[4] We treat the application filed as an application for leave to appeal, as the applicants suggest. They seek to invoke what they say is the Court's inherent jurisdiction to award the relief sought. However, there is plainly no jurisdiction for the Court to consider an application for leave in the absence of a lower court decision against which an application for leave to appeal can be initiated. To the extent the application for leave may be construed as initiated against earlier decisions of the Court of Appeal and the High Court challenging measures introduced as part of the Government's response to COVID-19 on the basis those measures comprised unlawful detention, we decline the application for leave.[4] Such an application would plainly be out of time, but there is no adequate explanation for the delay, nor are there any compelling reasons advanced in favour of an extension.

[5] The application for leave to appeal is accordingly dismissed.[5]

[6] We add that we also do not see any merit in the applicants' complaint that the Registry did not treat the application with suitable urgency.

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3 *Slavich v R* [2015] NZSC 195, (2015) 23 PRNZ 117 at [9].

4 See *Nottingham v Ardern* [2020] NZCA 144, [2020] 2 NZLR 207 (Kós P, French and Collins JJ) dismissing appeals against the judgments of the High Court in *Nottingham v Ardern* [2020] NZHC 796, [2020] 2 NZLR 197 (Peters J) and *B v Ardern* [2020] NZHC 814 (Peters J).

5 To the extent the application is advanced to relate to any future judgments, including in applications the applicants presently have before the High Court, there is plainly no jurisdiction for the Court to consider the application absent a lower court determination.