

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 111/2021
[2021] NZSC 158

BETWEEN KELLY ALEXANDRA ROE
Applicant

AND NEW ZEALAND VICE-CHANCELLORS
COMMITTEE
Respondent

SC 106/2021

BETWEEN KELLY ALEXANDRA ROE
Applicant

AND UNIVERSITY OF AUCKLAND
Respondent

SC 109/2021

BETWEEN KELLY ALEXANDRA ROE
Applicant

AND AUCKLAND DISTRICT HEALTH
BOARD
Respondent

Court: William Young, Glazebrook and O'Regan JJ

Counsel: Applicant in person
T D Smith and E G Ricketts for Respondent in SC 111/2021
I Rosic and Z A Brentnall for Respondent in SC 106/2021
A J F Perkins QC for Respondent in SC 109/2021

Judgment: 15 November 2021

JUDGMENT OF THE COURT

A The applications for leave to appeal are dismissed.

B The applicant is to pay costs of \$2,500 to each of the respondents.

REASONS

[1] The applicant has filed three applications for leave to appeal against decisions of Judges in the Court of Appeal. There is some interconnection between two of the applications and some commonalities to all three. So it is convenient to deal with them in a single judgment.

Roe v New Zealand Vice-Chancellors Committee – the dispute

[2] This litigation arises out of Ms Roe’s complaint that the University of Waikato did not appropriately deal with a Master of Philosophy thesis which she submitted in October 2018 and later re-submitted in revised form in February 2019. This complaint was made to the New Zealand Vice-Chancellors Committee. Its chief executive concluded that the complaint did not warrant further investigation of the University’s conduct. Ms Roe’s application for judicial review (which did not seek reconsideration of the decision under review but rather orders to remove the chief executive from office) was dismissed.¹ She appealed to the Court of Appeal. In issue are two judgments of Brown J: one upholding the decision of the Deputy-Registrar not to waive fees,² and the other upholding the decision of the Deputy-Registrar not to dispense with security for costs.³

Roe v University of Auckland – the dispute

[3] Ms Roe unsuccessfully sought judicial review of the refusals of the University of Auckland to enrol her in its MBChB programme for 2019 and 2020.⁴ She appealed to the Court of Appeal. In issue now is the judgment of Miller J dismissing her application to review the decision of the Deputy-Registrar not to waive security for costs in relation to the appeal.⁵

¹ *Roe v New Zealand Vice-Chancellors Committee* [2021] NZHC 719 (Isac J).

² *Roe v New Zealand Vice-Chancellors Committee* [2021] NZCA 420 [CA fee waiver judgment].

³ *Roe v New Zealand Vice-Chancellors Committee* [2021] NZCA 437 [CA security judgment].

⁴ *Roe v University of Auckland* [2021] NZHC 368 (Fitzgerald J).

⁵ *Roe v University of Auckland* [2021] NZCA 423.

Roe v Auckland District Health Board – the dispute

[4] Ms Roe is a plaintiff in proceedings in the High Court against the Auckland District Health Board and certain of its personnel in respect of events which occurred in September 2020. Amongst the relief she sought is the removal from office of the Board's chief executive and the most senior of the clinicians involved in the incident. An application by the Board to have the proceedings struck out was dealt with by Wylie J in the High Court by requiring her to replead her allegations and ordering her to pay costs.⁶ She purported to appeal against the costs order and in issue now is the judgment of Clifford J dismissing her application to review a decision of the Deputy-Registrar declining to accept her appeal for filing on the ground that she had not first obtained leave to appeal from the High Court as required by s 56(3) of the Senior Courts Act 2016.⁷

Commonalities and interconnection

[5] The three applications involve very particular litigation where the underlying disputes are personal to Ms Roe and do not raise issues of general or public importance. None of the appeals which Ms Roe wishes to pursue have obvious merit. And all applications for leave to appeal deal with process issues.

[6] There is a factual connection between these cases as Ms Roe's claim to entry into the MBChB programme at Auckland might be thought to depend largely on her ability to successfully challenge the University of Waikato's withholding from her of the degree which she sought (Master of Philosophy). This is not in issue in *Roe v New Zealand Vice-Chancellors Committee*, but we note that there was also a separate judicial review proceeding brought by the applicant against the University of Waikato, challenging, amongst other issues, the examination of her thesis. This has been dismissed by the High Court.⁸

⁶ *Roe v Auckland District Health Board* [2021] NZHC 1780; and *Roe v Auckland District Health Board* [2021] NZHC 2162.

⁷ *Roe v Auckland District Health Board* [2021] NZCA 441.

⁸ *Roe v University of Waikato* [2021] NZHC 1808.

Roe v NZ Vice Chancellors Committee – decision

[7] Ms Roe’s application to review the decision not to grant a fee waiver was dealt with by Brown J in accordance with reg 5(2)(b) and (4) of the Court of Appeal Fees Regulations 2001. He concluded that she had not made out her contention that the appeal satisfied reg 5(4)(a)⁹ (and she did not challenge the Deputy-Registrar’s finding that it did not satisfy reg 5(4)(b)¹⁰). In concluding that security for costs should not be waived, he addressed himself appropriately to *Reekie v Attorney-General*.¹¹

[8] Ms Roe’s application for leave to appeal appears to be principally directed to non-waiver of security for costs, albeit that she suggests that she also qualified for a fee waiver under reg 5(2)(a) and (3)(b)(i). She says that she did not advance that argument before Brown J because she recognised that she would have to address the merits of the proposed appeal in relation to waiver of security for costs.

[9] Treating her application as extending to both judgments, we are of the view that the proposed appeal does not involve issues of general or public importance and there is no appearance of a miscarriage of justice.¹²

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

Roe v University of Auckland – decision

[11] In determining Ms Roe’s application to review the decision of the Deputy-Registrar not to dispense with security for costs, Miller J correctly addressed himself to the principles established in *Reekie*.¹³ His conclusion that a reasonable solvent litigant would not prosecute the appeal appears to be unassailable. It follows that there is no issue of general or public importance raised by the proposed appeal and no appearance of a miscarriage of justice.¹⁴

⁹ CA fee waiver judgment, above n 2, at [16].

¹⁰ At [8].

¹¹ CA security judgment, above n 3, at [12] and [19]; and *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737.

¹² Senior Courts Act 2016, s 74(2)(a) and (b).

¹³ *Reekie*, above n 11.

¹⁴ Senior Courts Act, s 74(2)(a) and (b).

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

Roe v Auckland District Health Board – decision

[13] As noted, this was an appeal against a costs order, as opposed to an appeal against a decision striking out the proceeding. Given the wording of s 56(3) of the Senior Courts Act, the conclusion of Clifford J that Ms Roe required leave to appeal against this costs order was inevitable. For this reason, there would be no point in granting leave to appeal. This being the case, there is no need to address other arguments as to jurisdiction advanced by counsel for the Board.

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

Costs

[15] Ms Roe is to pay costs of \$2,500 to each of the respondents.

Solicitors:

Chapman Tripp, Wellington for Respondent in SC 111/2021

Gilbert Walker, Auckland for Respondent in SC 106/2021

C L Campbell, Auckland District Health Board, Auckland for Respondent in SC 109/2021