

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 125/2021
[2021] NZSC 168

BETWEEN ANTHONY PRATT KAYE AND MORVA
KAYE
Applicants

AND NORRIS WARD MCKINNON
Respondent

Court: O'Regan, Ellen France and Williams JJ

Counsel: Applicants in person
M J Dennett for Respondent

Judgment: 3 December 2021

JUDGMENT OF THE COURT

- A The application for an extension of time to apply for leave to appeal is dismissed.**
- B The applicants must pay the respondent costs of \$2,500.**
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REASONS

[1] The applicants seek leave to appeal against two judgments of the Court of Appeal.

[2] The first judgment dealt with the applicants' application to recall an earlier judgment of the Court of Appeal.¹ The earlier Court of Appeal judgment (delivered in 2016) dismissed the applicants' appeal against a High Court decision dismissing their

¹ *Kaye v Norris Ward McKinnon* [2020] NZCA 333 (Miller and Collins JJ).

claim against the respondent.² The decision of the High Court that was under appeal was a decision of Peters J.³

[3] The second decision against which the applicants wish to appeal is a judgment dismissing a second application for recall made by the applicants in respect of the 2016 Court of Appeal judgment.⁴

[4] The application for leave to appeal to this Court was filed on 4 October 2021, well outside the time for applying for leave to appeal against the first Court of Appeal judgment (dated 6 August 2020) and also outside the time for seeking leave to appeal against the second Court of Appeal judgment (dated 11 June 2021). The applicants seek an extension of time to file the application for leave to appeal. The submissions of the respondent engage with the merits of the application for leave rather than taking issue with the failure to seek leave within time, and we will do the same.

[5] The applicants sought leave to appeal to this Court against the 2016 Court of Appeal judgment. That application for leave to appeal was dismissed.⁵

[6] The applicants then applied for a recall of this Court's leave judgment, which was also dismissed.⁶

[7] The applicants consider they have been disadvantaged by the fact that they are litigants in person, and that this has led to the earlier decisions not addressing their claims as they now articulate them. However, the decision of this Court in 2016 refusing leave to appeal was the end of the road for the applicants' claim against the respondent. It is not open to the applicants to reopen litigation that has been finally resolved, as the first Court of Appeal recall judgment makes clear. This Court must not give leave to appeal unless it is in the interests of justice to do so, applying the criteria set out in s 74 of the Senior Courts Act 2016. It is clear that none of those criteria is met in this case.

² *Kaye v Norris Ward McKinnon* [2016] NZCA 32 (Harrison, Fogarty and Toogood JJ).

³ *Norris Ward McKinnon v Kaye* [2015] NZHC 1025.

⁴ *Kaye v Norris Ward McKinnon* [2021] NZCA 247 (Miller and Collins JJ).

⁵ *Kaye v Norris Ward McKinnon* [2016] NZSC 66.

⁶ *Kaye v Norris Ward McKinnon* [2016] NZSC 104.

[8] It is clear there is no proper basis on which leave to appeal could be granted. In those circumstances, the application for an extension of time to apply for leave to appeal is dismissed.

[9] The applicants must pay the respondent costs of \$2,500.

Solicitors:
Kennedys, Auckland for Respondent