

**NOTE: SUPREME COURT ORDER PROHIBITING PUBLICATION OF THE
NAME OR IDENTIFYING PARTICULARS OF P, W AND A
REMAINS IN FORCE.**

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 46/2021
[2021] NZSC 51**

BETWEEN	P (SC 46/2021) Applicant
AND	COMMISSIONER OF INLAND REVENUE First Respondent
	W Second Respondent
	ATTORNEY-GENERAL Third Respondent

Court: William Young, Glazebrook and O'Regan JJ

Counsel: Applicant in person

Judgment: 28 May 2021

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant seeks leave to appeal against a judgment of the Court of Appeal of 29 March 2021¹ which dismissed her application for recall of an earlier judgment

¹ *P (CA85/2019) v Commissioner of Inland Revenue* [2021] NZCA 97 (Courtney, Duffy and Wylie JJ).

of that Court delivered on 4 November 2019.² The Deputy Registrar has expressed the view that this Court has no jurisdiction to entertain the application.

[2] The applicant still wished to pursue her application and applied for “review” of the decision. In accordance with the procedure outlined by this Court in *Slavich v R*, the Deputy Registrar referred the document filed by the applicant to a leave panel of judges.³

[3] Section 68 of the Senior Courts Act 2016 provides:

68 Appeals against decisions of Court of Appeal in civil proceedings

The Supreme Court may hear and determine an appeal by a party to a civil proceeding in the Court of Appeal against a decision made in the proceeding, unless—

- (a) an enactment other than this Act makes provision to the effect that there is no right of appeal against the decision; or
- (b) the decision is a refusal to give leave or special leave to appeal to the Court of Appeal.

[4] In concluding that there was no jurisdiction, the Deputy Registrar referred to *Ngahuia Reihana Whanau Trust v Flight*, a case about s 7 of the Supreme Court Act 2003.⁴ This was in the same terms as s 68. In issue was an application for leave to appeal against a judgment of the Court of Appeal refusing to recall a leave decision. As the Court noted:

[3] The effect of s 7(b) of the Supreme Court Act [2003] is that the Court may not hear an appeal by a party to a civil proceeding against a refusal to give leave or special leave to appeal to the Court of Appeal. That prohibition must equally apply to an appeal against a refusal by the Court of Appeal to recall such a decision.

That reasoning is not applicable here as the Court of Appeal judgment of 4 November 2019 was not a leave decision. There is, however, another difficulty with the application.

² *P (CA85/2019) v Commissioner of Inland Revenue* [2019] NZCA 531, [2019] NZFLR 322 (Courtney, Duffy and Wylie JJ).

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

⁴ *Ngahuia Reihana Whanau Trust v Flight* (2004) 17 PRNZ 357 (SC).

[5] An application for leave to appeal against the 4 November 2019 judgment was dismissed by this Court on 18 March 2020.⁵ A further application for leave to appeal, treated as an application to recall the 18 March 2020 judgment, was dismissed on 20 May 2020.⁶ The current application is therefore the third in this Court, and fourth counting the recall application to the Court of Appeal, which the applicant has filed by way of challenge (direct or indirect) to the 4 November 2019 judgment. The point has now been reached where her repeated challenges to this judgment have become an abuse of process.

[6] Accordingly, the application is dismissed as an abuse of process.

⁵ *P (SC 120/2019) v Commissioner of Inland Revenue* [2020] NZSC 22, [2020] NZFLR 84.

⁶ *P (SC 120/2019) v Commissioner of Inland Revenue* [2020] NZSC 50.