

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 27/2021
[2021] NZSC 65

BETWEEN RAZDAN RAFIQ
 Applicant

AND ATTORNEY-GENERAL
 Respondent

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

Counsel: Applicant in person
 H M Carrad and A P Lawson for Respondent

Judgment: 16 June 2021

JUDGMENT OF THE COURT

- A The application for an extension of time to apply for leave to appeal is dismissed.**
- B The applicant must pay the respondent costs of \$1,500.**
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REASONS

Introduction

[1] On 27 May 2015, Wylie J in the High Court made an order under s 88B of the Judicature Act 1908 that Mr Rafiq was not to institute civil proceedings in any court without leave.¹ Although Mr Rafiq had initially opposed the application for a s 88B order, he later advised the Court that he wished to withdraw his statement of defence and that he consented to the order being made.

¹ *Attorney-General v Rafiq* [2015] NZHC 1153. In a later judgment, Venning J found that the order against Mr Rafiq would, in accordance with cl 10(2) of sch 5 of the Senior Courts Act 2016, cease to restrict the bringing of proceedings without leave on 28 February 2022: *Rafiq v Whata* [2019] NZHC 1193 at [37].

[2] Subsequently, more than two years later, Mr Rafiq sought an extension of time to file an appeal against the High Court judgment. In a judgment delivered on 3 August 2018, the Court of Appeal declined to grant an extension of time.² Mr Rafiq now applies for an extension of time to apply for leave to appeal in this Court against the decision of the Court of Appeal.

The proposed appeal

[3] Leave to appeal is sought on the basis that a miscarriage of justice will arise if the appeal is not heard. Amongst other matters, Mr Rafiq says that his proposed appeal to the Court of Appeal had merit and that the order under s 88B breaches his right to seek justice. He also emphasises that his application for citizenship was declined on the basis of that order.³

Our assessment

[4] The proposed appeal would have this Court essentially canvas the matters addressed in the Court of Appeal.

[5] In declining to grant an extension of time, the Court of Appeal considered there was no reasonable explanation for the delay.⁴ The Court also noted that the respondent accepted he had not been prejudiced by the delay. The Court then turned to the merits of the proposed appeal, noting the importance of the right at issue. However, the Court saw no merit in the proposed appeal given there was no dispute as to the Judge's conclusion that the facts demonstrated that Mr Rafiq had "persistently and without any reasonable ground instituted [various] vexatious legal proceedings".⁵ Rather, in challenging the decision, Mr Rafiq had just made an "unparticularised and unsubstantiated allegation of bias on the part of the Judge".⁶ The Court considered the proposed appeal would "inevitably fail".⁷ The Court said the best argument for

² *Rafiq v Attorney-General* [2018] NZCA 292 (Winkelmann, Clifford and Williams JJ) [CA judgment].

³ In opposing the application for leave to appeal, the respondent submits that Mr Rafiq has not given any evidence about a citizenship decision.

⁴ Mr Rafiq said he had filed an appeal in June or July 2015, but the Court of Appeal could find no record of that.

⁵ CA judgment, above n 2, at [18], citing s 88B(1) of the Judicature Act 1908.

⁶ At [18].

⁷ At [18].

Mr Rafiq was that the s 88B order was prejudicing his application for citizenship but that Mr Rafiq could seek leave to bring judicial review proceedings against Immigration New Zealand alleging it was not lawful to rely on his vexatious status.

[6] The Court of Appeal applied settled principles to the application for an extension of time.⁸ The proposed appeal would accordingly turn on the application of those principles to the specific facts.⁹ In terms of the facts, nothing raised by Mr Rafiq gives rise to any error in the assessment made by the Court of Appeal. There is accordingly nothing giving rise to the appearance of a miscarriage of justice.¹⁰

[7] The present application is well out of time. Mr Rafiq says that since 2018, he has been busy with other proceedings and he relies also on the effect of COVID-19 on proceedings. He also says that he in fact filed his application earlier in this Court, but there were issues about an application for a fee waiver. None of these matters adequately explain the delay. It is not clear from the material filed by Mr Rafiq that his earlier application was accepted for filing by this Court, but even if that was the case, the delay would still be considerable and there is no real explanation for it.

Result

[8] In these circumstances, the application for an extension of time to apply for leave to appeal is dismissed. The applicant must pay the respondent costs of \$1,500.

Solicitors:
Crown Law Office, Wellington for Respondent

⁸ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [38].

⁹ No question of general or public importance arises: Supreme Court Act 2003, s 13(2)(a); and Senior Courts Act, s 74(2)(a).

¹⁰ Supreme Court Act, s 13(2)(b); and Senior Courts Act, s 74(2)(b). See also *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369.