

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC UR 15/2021  
[2021] NZSC 69

BETWEEN TAIMING ZHANG  
Applicant

AND DISTRICT COURT AT WELLINGTON  
Respondent

Counsel: Applicant in person

Judgment: 23 June 2021

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**JUDGMENT OF ELLEN FRANCE J**

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**The application for review of the decision of the Deputy Registrar declining to waive the filing fee is dismissed.**

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**REASONS**

**Introduction**

[1] The applicant applies for leave to appeal from a decision of the High Court striking out two applications for judicial review as an abuse of process under r 5.35B of the High Court Rules 2016.<sup>1</sup>

[2] On 4 June 2021, the Deputy Registrar of this Court declined the applicant's application for a waiver of the leave to appeal filing fee of \$1,100. This was because he considered the proposed appeal did not concern a matter of genuine public interest. Rather, the proposed appeal raised issues specific to the applicant's case.

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<sup>1</sup> *Zhang v District Court at Wellington* [2021] NZHC 703 (Isac J) [HC judgment].

[3] Following receipt of the Deputy Registrar’s decision, the applicant applied for review of this decision under s 160 of the Senior Courts Act 2016. That application has been referred to me for decision.

## **Background**

[4] The present application arises out of the applicant’s attempts to file charging documents in the District Court to enable the applicant to pursue proposed private prosecutions against Susan Wojcicki in her capacity as the Chief Executive Officer of YouTube<sup>2</sup> and Andrew Kibblewhite in his capacity as Secretary for Justice.<sup>3</sup> The District Court Judge, in rejecting both charging documents for filing, concluded that the evidence provided was not sufficient to justify a trial.<sup>4</sup> The Judge did so with reference to s 26 of the Criminal Procedure Act 2011 and the principles set out in this Court’s decision in *S (SC 58/2019) v Vector Ltd*.<sup>5</sup>

[5] The applicant then presented documents for filing in the High Court seeking judicial review of the District Court decisions. The Registrar of the High Court declined to accept the documents for filing. The applicant applied to review that decision. The proceedings were referred to Isac J, who struck out both claims on the basis they comprised an abuse of process.<sup>6</sup>

[6] In terms of the claim against Mr Kibblewhite, the Judge said the claim was “so wholly deficient” that it could not be remedied by amendment.<sup>7</sup> Further, the Judge said there was no cause of action and that the “pleading fails to clearly identify a decision or the exercise of a public power which is the subject of review” or to set out “with any clarity the ground or grounds of review”.<sup>8</sup> Finally, the Judge observed that,

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<sup>2</sup> The alleged offending in relation to Ms Wojcicki was murder and manslaughter and was said to have arisen out of actions in removing a video about COVID-19 from YouTube.

<sup>3</sup> The alleged offence in relation to Mr Kibblewhite was, broadly, conspiracy to defeat the course of justice and related to the rejection by a court registry officer of an electronic evidence bundle. The applicant says rejection of evidence stored in electronic form is inconsistent with the Evidence Act 2006.

<sup>4</sup> *Zhang v Kibblewhite* DC Wellington, 18 January 2021 (Judge Hastings); and *Zhang v Wojcicki* DC Wellington, 18 January 2021 (Judge Hastings).

<sup>5</sup> *S (SC 58/2019) v Vector Ltd* [2020] NZSC 97.

<sup>6</sup> HC judgment, above n 1, at [19] and [21].

<sup>7</sup> At [17].

<sup>8</sup> At [17].

“while it seeks a form of relief, it is not possible to ascertain the precise nature of the relief sought or against whom it is intended to bite”.<sup>9</sup>

[7] In relation to the claim directed to Ms Wojcicki, the Judge considered the difficulties were even more apparent. There was no cause of action or prayer for relief, and the claim was “largely incomprehensible”.<sup>10</sup>

### **The fee waiver application**

[8] The fee waiver was originally sought on the basis that the proposed appeal concerns a matter of “genuine public interest” in terms of reg 5(2)(b)(i) of the Supreme Court Fees Regulations 2003. In his application for review, the applicant focusses on regs 5(2)(a) and 5(3)(b)(iii), that is, that the applicant is unable to pay the fee because he would suffer undue financial hardship if he paid the fee. No information is provided about the financial position of the applicant to support that claim.<sup>11</sup> Rather, the applicant says payment of the fee would be undue because the decisions of the Courts below are themselves an abuse of process. Broadly speaking, the allegation is that the way in which the District Court Judge described the basis of the proposed prosecutions is inaccurate and, the applicant says, deliberately so. In terms of the High Court, the applicant says the Judge misdescribed the contents of the statements of claim. He maintains that the claims did contain causes of action and the decision to strike out was contrary to the High Court Rules. A number of points are made in developing these matters but, essentially, the submission is that the proposed appeal will prevent what would otherwise be a travesty of justice.<sup>12</sup>

[9] The ultimate issue before this Court on the proposed appeal would be whether the High Court erred in striking out the claims. Having reviewed the extensive material filed by the applicant, I agree with the Deputy Registrar’s assessment. As

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<sup>9</sup> At [17].

<sup>10</sup> At [20].

<sup>11</sup> In the original fee waiver application, the applicant said that while he would continue with the proceeding even if the waiver was declined, he would suffer “some financial hardship from paying the fees” because he is “not rich at all”.

<sup>12</sup> In support of the submission that this involves a matter of genuine public interest, the applicant, in the original fee waiver application, said his case could clarify a number of questions of law, including what constitutes an abuse of process, the rules relating to electronic case documents and the scope of the alleged offences.

noted, there is no evidence of the applicant's financial circumstances to support the view that the applicant would suffer undue financial hardship if he paid the fee. Further, resolution of the proposed appeal would turn on the particular facts. Finally, if the underlying proceedings had any public interest value, that has well been diminished by the deficiencies that led the High Court to strike out the claims in that Court.

### **Result**

[10] The application for review is dismissed. If the applicant wishes to have the application for leave to appeal accepted for filing, the applicant must first pay the filing fee.