IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 58/2022
[2022] NZSC 105

BETWEEN	JOHN KENNETH SLAVICH Applicant
AND	ATTORNEY-GENERAL Respondent

Court:	O'Regan, Ellen France and Kós JJ
Counsel:	Applicant in person P J Gunn and V McCall for Respondent
Judgment:	2 September 2022

JUDGMENT OF THE COURT

The application for an extension of time to apply for leave to appeal is dismissed.

REASONS

[1] On 12 May 2022, the applicant filed an application for leave to appeal to this Court against a minute of the then Chief Judge of the High Court, Winkelmann J, dated 24 March 2015 (the minute). Given the delay of over seven years since the date of the minute, he also requires an extension of time to apply for leave.[1]

[2] The Supreme Court Registry declined to accept the application. The applicant sought a review by a judge of that decision. In accordance with this Court's practice,[2] the application was referred to the present panel for consideration.

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1 His earlier application for an extension of time to appeal to the Court of Appeal was rejected by that Court but he did not seek leave to appeal against the Court of Appeal's decision: see below at [4].

2 *Slavich v R* [2015] NZSC 195 at [9].

[3] The minute provided as follows:

> [1] Mr Slavich has been declared a vexatious litigant in these proceedings. He has previously applied for a recall of the order declaring him to be a vexatious litigant. Toogood J dismissed that application as misconceived (minute of Toogood J, 19 December 2014). Nevertheless Mr Slavich continues to make repeated attempts to reopen the issue already determined in this proceeding.
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> [2] In response to an application to recall his minute of 19 December Toogood J issued a minute (dated 17 March 2015) in which he said there was no proper basis on which to recall the earlier minute, dismissing the application. He directed the Registrar not to accept for filing any further application by Mr Slavich in the proceeding.
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> [3] Mr Slavich has now sent correspondence to the Court, presumably in an attempt to step around Toogood J's direction that no further application be received. He again seeks a recall of the Court order declaring him a vexatious litigant.
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> [4] The Court does not receive applications of this nature by way of correspondence. The application is in any case misconceived. The proceeding is at an end. No further applications or correspondence are to be received in respect of it. Any further correspondence received by the Court from Mr Slavich on this file will not be responded to.

[4] On 13 December 2018, the applicant filed a notice of appeal in the Court of Appeal, seeking an extension of time to appeal to that Court against the minute. The Court of Appeal dismissed that application.[3] The Court noted that the only explanation given for the delay of three years eight months in filing the notice of appeal with the Court of Appeal was "inadvertence".[4] It said it was satisfied that the proposed appeal did not "involve a matter of public interest" and was "clearly hopeless".[5] That meant that the "proposed appeal would be futile".[6]

[5] The applicant does not provide any explanation of the delay of over seven years between the date of the minute and the date of his notice of application for leave to appeal to this Court, or the delay of over two years since his application for an extension of time to appeal to the Court of Appeal was dismissed.

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3 *Slavich v Attorney-General* [2020] NZCA 32 (French, Brown and Goddard JJ) [CA judgment].
4 At [6].
5 At [6].
6 At [9].

[6] The applicant wishes to argue, if an extension of time is given and leave is granted, that the minute is in error because it does not refer to the possibility that a court could exercise its inherent jurisdiction to recall a judgment if fresh evidence not previously available has come to light which is material to the outcome of the case.[7] The Court of Appeal judgment identified one major problem with that argument.[8] The applicant did not, in fact, have any fresh evidence (the Court found that the "evidence" identified by the applicant was not, in fact, evidence). We agree.

[7] There was no reason nor need for the minute to refer to the possibility of recall based on fresh evidence. The minute was setting out why the High Court rejected the applicant's attempt to apply for recall by writing a letter to the Court, when the Court had ruled that no further recall applications would be considered. The minute was not dealing with an application for recall. As the Court of Appeal noted in respect of the application before it, an appeal against the minute would be both hopeless and futile.

[8] This Court may not grant leave unless it is in the interests of justice to do so and, in relation to a leapfrog appeal, exceptional circumstances exist.[9] It is clear that neither of these tests is satisfied in this case. In those circumstances there would be no point in granting an extension of time to file a notice of application for leave to appeal. The application is therefore dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

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7 See the discussion in *Herron v Wallace* [2016] NZHC 2426.
8 CA judgment, above n 3, at [7]–[8].
9 Supreme Court Act 2003, ss 13 and 14; and Senior Courts Act 2016, ss 74 and 75.