

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 147/2021
[2022] NZSC 2**

BETWEEN GARTH BOWKETT PATERSON
 Applicant

AND ATTORNEY-GENERAL
 (FOR MINISTRY OF JUSTICE)
 Respondent

Court: William Young, Ellen France and Williams JJ

Counsel: Applicant in person
 H M Carrad for Respondent

Judgment: 10 February 2022

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B There is no order as to costs.

REASONS

Introduction

[1] The applicant seeks leave to appeal against the decision of the Court of Appeal declining to grant an extension of time under r 43(2) of the Court of Appeal (Civil) Rules 2005 to seek a fixture and file his case on appeal.¹

¹ *Paterson v Attorney-General* [2021] NZCA 536 (Miller and Cooper JJ) [CA judgment].

Background

[2] The current application has its genesis in a dispute between the applicant and other parties in relation to a subdivision of land in the Hawkes Bay.² The applicant was adjudicated bankrupt on 5 April 2016 for unpaid costs on the application of one of the parties associated with this dispute.³

[3] The applicant did not appear at the hearing of the application to bankrupt him on 5 April 2016 although he had received formal notice of the hearing. The fixture was not published online on the daily list on the Courts of New Zealand website. Relying on that omission, the applicant filed proceedings against the Attorney-General claiming the omission of the fixture from the daily list was a breach of his right to natural justice under s 27(1) of the New Zealand Bill of Rights Act 1990; a negligent misstatement of fact; and breached a duty of care owed to him. The claim was dismissed.⁴ The High Court noted, amongst other matters, that the applicant had been afforded the right to notice when he was formally served with the relevant documents and had also been given the opportunity to be heard. The applicant appealed from that decision to the Court of Appeal but the appeal was deemed abandoned because it was not pursued in time.⁵ The applicant sought an extension of time.

[4] In dismissing the application, the Court of Appeal said that if the appeal was genuinely arguable, the Court would have granted an extension of time as the delay was not substantial and there was no prejudice to the respondent. But the Court declined the application because it said that the appeal was “manifestly hopeless”.⁶ The Court considered the proceeding was an abuse of process as it was “a collateral attack on the order adjudicating him bankrupt” which the applicant had twice failed to

² See the summary in *Paterson v Lepionka & Co Investments Ltd* [2021] NZSC 171 [SC leave decision] at [1]–[6].

³ *Lepionka & Co Investments Ltd v Paterson* HC Wellington CIV-2015-485-973, 5 April 2016 (Minute of Associate Judge Osborne).

⁴ *Paterson v Attorney-General* [2020] NZHC 3253 (Edwards J).

⁵ The applicant unsuccessfully sought dispensation of security for costs and did not file his application for review of that decision in time.

⁶ CA judgment, above n 1, at [13] citing *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [39(c)].

have annulled.⁷ The Court also said that the decision of the High Court was “plainly correct”.⁸

The proposed appeal

[5] The applicant says that the proposed appeal raises a question of general and public importance as it concerns a breach of natural justice on the basis of misinformation on the Courts of New Zealand website and a question of general commercial significance because of the importance of the ability to rely on digital publications. The applicant also contends that there are various errors in the Court of Appeal judgment, including the failure to recognise that his appeal has merit.

[6] We are not satisfied that the criteria for leave to appeal are met.⁹ The proposed appeal would not challenge the principles applicable to applications under r 43(2) of the Court of Appeal (Civil) Rules but rather would involve the application of those principles to these particular facts. No questions of general or public importance or of general commercial significance arise. Further, we accept the submissions for the respondent that the underlying proceedings and the present application in effect seek to challenge the High Court’s decision on 5 April 2016 to adjudicate the applicant bankrupt, which he has unsuccessfully sought to annul on two previous occasions.¹⁰ In these circumstances, it is not necessary in the interests of justice to allow him to pursue this matter. Finally, nothing raised by the applicant calls into question the Court of Appeal’s assessment.

Result

[7] The application for leave to appeal is dismissed. There is no order as to costs.

Solicitors:
Crown Law Office, Wellington for Respondent

⁷ At [13] citing *Paterson v Lepionka & Co Investments Ltd* [2016] NZHC 1331; and *Paterson v Lepionka & Co Investments Ltd* [2018] NZHC 3022, upheld on appeal in *Paterson v Lepionka & Co Investments Ltd* [2019] NZCA 548.

⁸ At [14].

⁹ Senior Courts Act 2016, ss 74(1), (2) and (4).

¹⁰ See SC leave decision, above n 2, at [9].