

**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI**

**SC 160/2021  
[2022] NZSC 3**

BETWEEN TANYA FELICITY DUNSTAN  
Applicant

AND ATTORNEY-GENERAL  
First Respondent

MANUKAU COURT  
Second Respondent

Court: O'Regan, Ellen France and Williams JJ

Counsel: Applicant in person

Judgment: 14 February 2022

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

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**REASONS**

[1] The applicant filed a proceeding in the High Court at Auckland in which the statement of claim sought judgment for damages in tort against the Attorney-General and a Family Court Judge. The Registrar of the High Court referred the proceeding to a Judge under r 5.35A of the High Court Rules 2016, which permits the Registrar to refer a proceeding to a Judge where there is cause for concern that the proceeding amounts to an abuse of the Court's process. The Judge to whom the proceeding was referred, Lang J, determined that the proceeding was an abuse of process and therefore struck it out.<sup>1</sup>

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<sup>1</sup> *Dunstan v Attorney-General* [2021] NZHC 1670.

[2] The applicant filed a notice of appeal against the decision of Lang J in the Court of Appeal. However, she did not pay security for costs and did not apply for the allocation of a hearing date and file the case on appeal within three months after the appeal was brought. Under r 43(1) of the Court of Appeal (Civil) Rules 2005, an appeal to the Court of Appeal is treated as having been abandoned if the appellant does not apply for the allocation of a hearing date and file the case on appeal within three months after the appeal was brought. On 8 October 2021, the Deputy Registrar of the Court of Appeal issued a notice of result recording that the three month period specified in r 43(1) had elapsed and that the appeal was deemed to be abandoned.

[3] The applicant has now filed a notice of application for leave to bring a civil appeal to this Court. When the applicant presented the application for filing, the Deputy Registrar of this Court advised her that this Court did not have jurisdiction to deal with her application because there was no lower court judgment identified against which an appeal could be commenced.

[4] The applicant requested a review of the Deputy Registrar's decision. In light of this, the Registrar decided to accept the notice of application for leave to appeal for filing and refer it to a panel for decision, following the practice outlined by this Court in *Slavich v R*.<sup>2</sup>

[5] Under s 68 of the Senior Courts Act 2016, this Court has jurisdiction to 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 certain exceptions apply). In the present case, no decision has been made in the proceeding: the abandonment of the applicant's appeal to the Court of Appeal occurred by the operation of r 43(1) of the Court of Appeal (Civil) Rules, not because of a decision made by a judicial officer. This Court therefore does not have jurisdiction to hear or determine an appeal and cannot grant leave to appeal. The application for leave to appeal is dismissed accordingly. As the Deputy Registrar pointed out, the applicant should have made an application to the Court of Appeal if she wished to revive her appeal to that Court.

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<sup>2</sup> *Slavich v R* [2015] NZSC 195 at [9].