

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 39/2022
[2022] NZSC 84

BETWEEN VIN TOMAR
 Applicant

AND MONIKA TOMAR
 Respondent

Court: O'Regan, Ellen France and Williams JJ

Counsel: Applicant in person
 K L Hoult for Respondent

Judgment: 4 July 2022

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant must pay the respondent costs of \$2,500.**
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REASONS

[1] In December 2017 the respondent made an application in the Family Court under the Property (Relationships) Act 1976 for the classification and division of relationship property. On 22 May 2020, the Family Court issued a judgment dealing with classification and division.¹ Almost exactly a year later, on 20 May 2021, the Family Court issued a further judgment addressing various interlocutory matters raised by the applicant.² The applicant appealed to the High Court against the two Family Court judgments. The High Court dismissed the appeals³ and declined an

¹ *Tomar v Tomar* [2020] NZFC 2960 (Judge D A Burns).

² *Tomar v Tomar* [2021] NZFC 4666 (Judge D A Burns).

³ *Tomar v Tomar* [2021] NZHC 2353 (Lang J) [HC judgment].

application for leave for a second appeal to the Court of Appeal.⁴ The applicant sought leave to appeal from the Court of Appeal but his application for leave was dismissed.⁵

[2] The applicant then filed an application in this Court for leave to appeal against the decision of the Court of Appeal. The Registrar refused to accept the application for filing on the basis this Court had no jurisdiction to hear an appeal from a decision of the Court of Appeal to decline leave.⁶ The applicant sought a review of that decision and sought a stay of the decisions in the Courts below. These applications have been referred to a panel of three Judges for our determination.

[3] It is clear that this Court does not have jurisdiction to hear and determine the proposed appeal. The decision of the Court of Appeal was a refusal to grant leave to appeal to that Court. Section 68(b) of the Senior Courts Act 2016 specifically precludes this Court from hearing and determining an appeal against a decision of that kind. The applicant argues that there is authority for the proposition that the Court has jurisdiction in this case. He refers in this respect to *Nation v Nation*,⁷ where this Court said there was jurisdiction to hear an appeal from a decision of the Court of Appeal concerning relationship property.⁸ However, as the respondent submits, that was an application for leave to appeal from a substantive decision of the Court of Appeal.

[4] We have considered whether the application should be treated as an application to bring a direct appeal against the decision of the High Court.⁹ However, in our view it is clear that the application for leave to appeal does not meet the criteria for leave to appeal.¹⁰

[5] The proposed appeal would canvas various matters both procedural and substantive which are said to result in unlawful judgments in the Courts below. For example, the applicant claims the Family Court issued its first judgment before the

⁴ *Tomar v Tomar* [2021] NZHC 3003.

⁵ *Tomar v Tomar* [2022] NZCA 28 (Brown, Brewer and Cull JJ) [CA judgment]; application for recall declined: *Tomar v Tomar* [2022] NZCA 85.

⁶ Citing *Ngahuia Reihana Whanau Trust v Flight* (2004) 17 PRNZ 357 (SC).

⁷ *Nation v Nation* [2005] NZSC 14, (2005) 17 PRNZ 568.

⁸ The issue as to jurisdiction arose because of arguments based on s 67 of the Judicature Act 1908 dealing with the question of when decisions on second appeal are final.

⁹ See *Cook v Housing New Zealand* [2018] NZSC 42.

¹⁰ Senior Courts Act 2016, ss 74 and 75.

extension of time for him to file closing submissions had lapsed¹¹ and erroneously considered the parties' marriage was not a relationship of short duration.¹²

[6] The issues the applicant wishes to raise would largely reprise the matters addressed by the High Court in some detail. The Court of Appeal, in declining leave, took the view that the proposed second appeal largely sought to revisit the conclusions of the High Court and in doing so “to engage in the general correction of asserted errors, primarily of fact”.¹³ The Court said it did not see any error in either the Judge's reasons or conclusions. It is equally apparent to us that if leave to appeal directly from the High Court was granted, the appeal would not raise any question of general or public importance. Nor does anything raised by the applicant give rise to the appearance of a miscarriage of justice.¹⁴ Against this background, the applicant has not established there are exceptional circumstances justifying taking a proposed appeal directly from the High Court to this Court.¹⁵

[7] The application for leave to appeal is dismissed. It follows that, assuming for these purposes there would be jurisdiction to do so, there is no basis to grant a stay or to make any of the other orders sought by the applicant such as an order for cross-examination of the respondent.

[8] The applicant must pay the respondent costs of \$2,500.

Solicitors:
Niemand Peebles Hoult, Hamilton for Respondent

¹¹ The timeframes were affected by the first countrywide lockdown in response to COVID-19 and extensions of time were granted. The High Court said that whatever the factual position was, the appeal cured any defect: HC judgment, above n 3.

¹² There had been no cross-examination of the respondent on this issue in the Family Court meaning that this issue was not put to the respondent. Moreover, in any event, Lang J found against the applicant on the facts: HC judgment, above n 3.

¹³ CA judgment, above n 5, at [18].

¹⁴ See also *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369.

¹⁵ Senior Courts Act, s 75. Nor the elevated criterion (“extremely compelling”) set out in *Burke v Western Bay of Plenty District Council* [2005] NZSC 46, (2005) 18 PRNZ 560 at [4]; and see also *Cook v Housing New Zealand*, above n 9, at [9]–[10].