

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 82/2023  
[2023] NZSC 106

BETWEEN

MOHANNAD HASAN TOUBAT  
Applicant

AND

HASAN MOHAMMAD HASAN TOUBAT  
Respondent

Court: O'Regan, Ellen France and Williams JJ

Counsel: Applicant in person  
No appearance for Respondent

Judgment: 15 August 2023

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JUDGMENT OF THE COURT

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

**B There is no order as to costs.**

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REASONS

[1] The applicant filed a notice of application to bring a civil appeal to this Court on 18 July 2023.<sup>1</sup>

[2] Under the heading on the application form “What are the specific grounds of your proposed appeal?”, the answer given is, “Truth, Evidence”. The part of the application form which asked for the reasons why leave should be given has been crossed out. Under the heading “What judgment do you seek from the

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<sup>1</sup> The application form was altered to remove the words “for leave”, but as all appeals to this Court are by leave, we treat the document as an application for leave to appeal.

Supreme Court?”, the form says, “[j]ustice by returning land title to me as it was prior to signing contract that did not meet its terms & conditions”.

[3] The application relates to a decision of the Court of Appeal.<sup>2</sup> In that decision, the Court of Appeal struck out the applicant’s appeal to that Court.

[4] The appeal to the Court of Appeal was against a decision of the High Court striking out the applicant’s proceeding in that Court on the ground that it was an abuse of process.<sup>3</sup>

[5] The Court of Appeal set out why the proceeding in the High Court was struck out:<sup>4</sup>

[3] The proceeding was struck out in the High Court for several reasons. First, Mr Toubat sought summary judgment but he had declined to file a statement of claim, notice of proceeding, application for summary judgment or affidavit. He simply provided the Court with some pages of documents. It was evident that he sought to cancel an agreement for sale and purchase for non-payment, but that was all the Court knew. Second, he had not served the respondents, who appeared to be overseas. Third, he insisted on proceeding without notice to them. Fourth, he had not himself given an address for service. Finally, he refused to remedy these failings despite the Registrar's attempts to explain what he must do.

[6] The Court of Appeal then recorded that when invited to file submissions in the Court of Appeal, the applicant filed a document stating, “my appeal has merit because it is based on truth of evidence that uphold[s] justice”.<sup>5</sup>

[7] The Court of Appeal noted that it remained the case that no attempt had been made to file a compliant proceeding in which the High Court could enter summary judgment and that the proceeding was therefore a “misuse of that Court’s resources”.<sup>6</sup> It said the same was true of the appeal to the Court of Appeal and for that reason struck out the appeal to that Court.

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<sup>2</sup> *Toubat v Toubat* [2023] NZCA 298 (Miller and Collins JJ) [CA judgment].

<sup>3</sup> *Toubat v Toubat* [2023] NZHC 1737 (Cull J).

<sup>4</sup> CA judgment, above n 2 (footnotes omitted).

<sup>5</sup> At [4].

<sup>6</sup> At [5].

[8] The applicant filed one page of submissions to this Court. He requested that the Court order that a sale and purchase agreement relating to a property in Christchurch be cancelled, so that the property and title to the property would be returned to him. He listed the reasons for his application as follows:

- (a) the terms and conditions of the sale and purchase agreement had not been met;
- (b) no payment was made on the settlement date;
- (c) the applicant had submitted sufficient evidence of his bank account details to date;
- (d) all evidence had been submitted; and
- (e) it was in the interests of truth and justice.

[9] However, the applicant did not elaborate on these grounds. Copies of certain bank statements were attached to this submission.

[10] The applicant also filed in this Court a copy of a document which appears to be an agreement for sale and purchase of a property in Christchurch by the applicant to the respondent. We assume that it is this document that is intended to be the basis of the applicant's claim. It is unclear to us why title to the land has been transferred to the respondent if the terms of settlement have not been met, as is implied by the material filed by the applicant.

[11] There is nothing before this Court that provides a basis for the grant of leave to appeal.<sup>7</sup> This Court is in a similar position to both the High Court and the Court of Appeal, in that there is simply insufficient information before us and no evidential basis on which we could entertain the claim the applicant seems to wish to bring.

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<sup>7</sup> Senior Courts Act 2016, s 74.

[12] We can only recommend to the applicant that he seeks legal advice and, if advised to do so, instructs a lawyer to place a compliant claim before the appropriate court so that his claim can be the subject of proper adjudication.

[13] The application for leave to appeal is dismissed. As we did not call on the respondent to file submissions, we make no order as to costs.