

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 65/2023  
[2023] NZSC 109

BETWEEN TANYA FELICITY DUNSTAN  
Applicant

AND ATTORNEY-GENERAL  
First Respondent

DISTRICT COURT AT MANUKAU  
Second Respondent

JDN  
Third Respondent

Court: Glazebrook, O'Regan and Kós JJ

Counsel: Applicant in person  
D Jones for First Respondent  
No appearance for Second and Third Respondents

Judgment: 22 August 2023

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**JUDGMENT OF THE COURT**

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- A. The application for recall of this Court's judgment of 9 August 2023 (*Dunstan v Attorney-General* [2023] NZSC 100) is dismissed.**
- B. There is no order as to costs.**
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**REASONS**

[1] On 9 August 2023 we dismissed the applicant's application for leave to appeal a decision of the Court of Appeal refusing extension of time to appeal against a

judgment of the High Court dismissing judicial review of a decision of the District Court declining to authorise the commencement of five private prosecutions.<sup>1</sup>

[2] We held that none of the criteria for appeal provided in s 74(2) of the Senior Courts Act 2016 were made out because the proposed appeal turned on its particular facts, no question of general or public importance arose and nothing raised by Ms Dunstan gave rise to the appearance of a miscarriage of justice.

[3] The applicant now applies for recall of this Court's decision.

[4] The general rule is that a judgment, once delivered, must stand for better or worse, subject to appeal.<sup>2</sup> It will only be recalled in exceptional circumstances.<sup>3</sup> A recall application cannot be used to relitigate the reasons for refusing leave.<sup>4</sup> Recall will be appropriate where some procedural or substantive error has occurred that would result in a miscarriage of justice.<sup>5</sup>

[5] The applicant's arguments on recall complain about the brevity of the Court's reasoning. We record that s 77 of the Senior Courts Act 2016 provides that though reasons must be given for refusing leave, such reasons may be stated briefly and in general terms only.

[6] The recall application seeks to relitigate points already raised on the original application. They were considered and rejected by this Court in refusing leave to appeal. Nothing now presented makes any cogent case that this is an appropriate case for leave.

[7] Furthermore, nothing raised by the applicant meets the threshold for a recall application to be granted as set out at [4] above.

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<sup>1</sup> *Dunstan v Attorney-General* [2023] NZSC 100; *DFT v Attorney-General* [2023] NZCA 225; and *Dunstan v The District Court at Manukau* [2021] NZHC 311.

<sup>2</sup> *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC) at 633, as cited in *Craig v Williams* [2019] NZSC 60 at [10]. Exceptions are discussed in *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd (No 2)* [2009] NZSC 122, [2010] 1 NZLR 76 at [2]; and *Green Growth No 2 Ltd v Queen Elizabeth the Second National Trust* [2018] NZSC 115 at [20].

<sup>3</sup> *Wong v R* [2011] NZCA 563 at [13]; and *Uhrle v R* [2020] NZSC 62, [2020] 1 NZLR 286 at [29].

<sup>4</sup> *Nuku v District Court at Auckland* [2018] NZSC 39 at [2].

<sup>5</sup> *Uhrle*, above n 3, at [27].

## **Result**

[8] The application for recall is dismissed.

[9] There being no need to hear from the respondents, there is no order as to costs.

Solicitors:  
Crown Law Office, Wellington for First Respondent