IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 100/2022
[2023] NZSC 133

BETWEEN	GREGORY JOHN JONES Applicant
AND	NEW ZEALAND BLOODSTOCK FINANCE AND LEASING LIMITED Respondent

Court: Glazebrook, Williams and Kós JJ

Counsel: Applicant in person
F A King and A Osama for Respondent

Judgment: 11 October 2023

JUDGMENT OF THE COURT

A The application to adduce further evidence is dismissed.

B The application for recusal is dismissed.

C The application for recall is dismissed.

REASONS

[1] This is an application for recall of the judgment of this Court delivered on 2 August 2023 (declining leave to appeal),[1] and for leave to adduce further evidence, recusal of Judges, stay of execution and further directions. It proves unnecessary to deal with the latter two applications.

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[1] *Jones v New Zealand Bloodstock Finance and Leasing Ltd* [2023] NZSC 98 (Glazebrook, Williams and Kós JJ) [SC leave judgment].

[2] The background is set out in the leave judgment.[2] It need not be repeated here, beyond recording that the case is concerned with orders for summary judgment in debt made against the applicant in the High Court.

Further evidence?

[3] The applicant seeks to adduce further evidence (beyond that already filed here and in courts below) relating to the transactions resulting in his indebtedness to the respondent. A very large part concerns an injury said to have occurred to a filly and the possibility that this was deliberately caused. Other aspects concern adverse sale prices received for the applicant's horses. Yet other aspects rehearse complaints about the manner in which he was treated in courts below, asserting that Judges in the High Court have made elementary and fundamental mistakes and have treated the applicant appallingly.

[4] We consider this proposed evidence involves the relitigation of factual matters in other courts and not germane to the particular applications before us. It is neither fresh nor cogent to those applications. Leave to adduce it is declined.

Recusal?

[5] The recusal application asserts that the present panel is required to disqualify itself for bias and should not itself determine the application. It is necessary to address this in a little more detail.

[6] It will be recollected that the applicant had made a series of complaints about Judges dealing with his litigation in other Courts. He then requested Judges of this Court recuse themselves where they had personal knowledge of the issues he referred to, had a personal relationship with the Judges complained of or where they had discussed the applicant or any aspect of his litigation with those Judges. As we recorded in our judgment, it is not for a litigant to interrogate Judges on such matters, but the very short answer indeed was that no Judge of this Court, whether assigned to

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2 At [1]–[5].

the panel or not, had any such knowledge, relationship or discussion.[3] So that is the starting point in analysing any apparent bias necessitating recusal.

[7] It will also be recollected that the applicant had filed an affidavit deposing circumstances which might require two members of this panel to recuse from hearing his application:[4]

(a) As to one member, that he had seen the Judge in the TAB at Eastridge on several occasions; that while the Judge's presence "was not intimidating in any way … I gained the impression that he was aware that I was under pressure at that time from the types of parties of which I now complain"; but also that he had no reason to assume that the Judge "even now knows of me or my identity".

(b) As to the second member, that people would "present themselves immediately on the making of a telephone call or other possible connector" and that he recollected "this occurred in a judicial management conference in which [the Judge] was presiding and my impression … was that he was responsible for an activity of [that] type".

[8] These assertions are baffling. In the first case, the applicant submits that the Judge may well not know who the applicant is at all, but that the Judge might, somehow, have gained an impression—in the course of attending a TAB he has never been to[5]—that the applicant was under pressure of some sort. In the second case, the Judge is said, somehow and on the basis of impression, to have caused people to "present themselves" in the vicinity of the applicant's office.

[9] We recite the evidence simply to put the applicant's assertions in their proper context. Whatever one is to make of these claims, and howsoever they ought to be resolved, a litigant may not make unsupported and irrelevant allegations about Judges

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3 At [6].
4 At [10].
5 At [10], n 13.

and then assert they should no longer undertake their judicial responsibilities. The standard for recusal, laid down by this Court in *Saxmere*, is not remotely met.[6]

Recall?

[10] Recall is an exceptional procedure; recall apart, a decision of this Court—whether concerned with leave to appeal or a substantive appeal—is, and must be, final.[7] A judgment will only be recalled in exceptional circumstances, being those identified in *Horowhenua County v Nash (No 2)*, as applied by this Court in *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd (No 2)*.[8] A recall application cannot be used to relitigate the reasons for refusing leave.[9] Recall will be appropriate where some procedural or substantive error has occurred that would result in a miscarriage of justice.[10]

[11] The recall application asserts that there has been a miscarriage of justice in refusing leave. It is said to arise from the need to consider further evidence, and because of "errors or misjudgements" in the leave decision.

[12] The first of these we have already addressed and declined.[11] The second involves an attempt to relitigate the reasons for refusing leave, which is impermissible.[12] That impression is confirmed by the terms of the applicant's memorandum in support of the application. In short (and it is not short) it seeks, by misconstruction of the decision below, and renewed analysis of authority and review of facts adduced in evidence below or in the fresh evidence application, to assert evaluative error by this Court at [15]–[16] of the leave judgment.

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6 *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd* [2009] NZSC 72, 1 NZLR 35.

7 *Wong v R* [2011] NZCA 563 at [13]; and *Uhrle v R* [2020] NZSC 62, [2020] 1 NZLR 286 at [20].

8 *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC) at 633; *Saxmere Company Ltd v Wool Board Disestablishment Company 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].

9 *Nuku v District Court at Auckland* [2018] NZSC 39 at [2].

10 *Uhrle*, above n 7, at [25]–[27].

11 See above at [4].

12 See above at [10].

[13] This, as we have just said, is an attempt to relitigate the reasons for refusing leave, which is impermissible in terms of the principles stated at [10] above. Nothing raised by the applicant meets the threshold for a recall application to be granted.

Result

[14] The application to adduce further evidence is dismissed.

[15] The application for recusal is dismissed.

[16] The application for recall is dismissed.

[17] As no substantial response was required of the respondent, we make no order for costs.

Solicitors:
McKenna King Dempster, Hamilton for Respondent