

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC UR 46/2023
[2023] NZSC 165

BETWEEN VINCENT ROSS SIEMER
 Applicant

AND ATTORNEY-GENERAL
 Respondent

Counsel: Applicant in person

Judgment: 12 December 2023

JUDGMENT OF KÓS J

The application for review of the decision of the Registrar declining to waive the filing fee is dismissed.

REASONS

[1] Mr Siemer has filed an application for leave to appeal from a judgment of Brown J, sitting as a Judge alone in the Court of Appeal under s 49(3) of the Senior Courts Act 2016. In that judgment Brown J declined Mr Siemer’s application for review of a Deputy Registrar’s decision not to dispense with security for costs.

[2] The filing fee for an application for leave to appeal to this Court is \$1,100. Mr Siemer sought waiver of that filing fee under reg 5 of the Supreme Court Fees Regulations 2003. Specifically he relied on regs 5(2)(a) and 5(3)(b)(ii), i.e., that he “has not been granted legal aid in respect of the matter for which the fee is payable and ... is wholly dependent for the payment of his ... living expenses on New Zealand superannuation under the New Zealand Superannuation and Retirement Income Act 2001 ...”.

[3] In support of his application he attached a notice of award from the United States Social Security Administration, dated 7 February 2023, advising that he would receive a monthly retirement benefit of some USD 1,963 per month commencing 2 June 2023. It remains unclear why Mr Siemer enclosed a document originating in the United States by way of proof of his dependence on New Zealand superannuation.

[4] In a decision dated 22 November 2023 the Registrar of the Supreme Court referred to the application and supporting document. She concluded that they did not satisfy her that the criteria specified in reg 5(3)(b)(ii) were met. Accordingly the application for a fee waiver was declined by the Registrar.

Application for review

[5] On 23 November 2023 Mr Siemer sought review of the Registrar's decision. He now also relied on reg 5(2)(b), namely that the appeal concerned a matter of public interest and was unlikely to be commenced unless the fee was waived. On this occasion he attached a confirmation letter from the New Zealand Ministry of Social Development dated 18 June 2021 confirming that Mr Siemer was eligible to receive fortnightly payments of \$768.92 (gross) without deduction.

[6] In his application for review, Mr Siemer refers to ss 177–180 of the Social Security Act 2018 which require recipients of a New Zealand benefit or pension to inform the Ministry of Social Development as to the rate of any overseas pension received by the recipient, his spouse or dependents. As he also notes, s 189 of the Act provides that moneys otherwise payable under New Zealand benefits legislation to a person in receipt of an overseas pension are to be reduced by the amount of that pension. Mr Siemer's United States pension is higher than the amount of New Zealand superannuation he would be entitled to. As he notes, the effect of s 189 is therefore to exclude him from receipt of New Zealand superannuation, although he says that does not negate his entitlement to it.

Decision

[7] The question for me is whether Mr Siemer has established that he falls within either regs 5(2)(a) or 5(2)(b) of the Supreme Court Fees Regulations.

[8] I am satisfied that the Registrar was correct to conclude that Mr Siemer does not fall within reg 5(2)(a). In short, he has not gone on to demonstrate (as required by reg 5(3)(b)(ii)) that he is wholly dependent for payment of his living expenses on New Zealand superannuation. First, he is not presently in receipt of New Zealand superannuation. Secondly, he is in receipt of an overseas pension of a greater amount. Thirdly (and most importantly), he has not established that that is the sole means by which he is meeting his living expenses.

[9] In his original application for fee waiver, Mr Siemer did not rely on the alternative of reg 5(2)(b). That requires two criteria to be met: first, a matter of genuine public interest is raised by the proceeding and, secondly, the proceeding is unlikely to be commenced or continued unless the fee is waived. As Mr Siemer has now raised reg 5(2)(b), I consider it. He has advanced several arguments as to why his proceeding concerns a matter of genuine public interest. I will assume, without deciding, that a qualifying matter of public interest is engaged. However I am not satisfied that Mr Siemer has established that the proceeding is unlikely to be commenced or continued unless the fee is waived. His submissions address only the former criterion. The latter criterion is not addressed. Satisfying it would of course depend on the provision of persuasive financial information.

[10] The application for review must therefore be dismissed.

Result

[11] The application for review is dismissed. If Mr Siemer wishes to have the application for leave to appeal accepted for filing, he must pay the requisite filing fee.