

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 114/2022
[2023] NZSC 3

BETWEEN	TANYA FELICITY DUNSTAN Applicant
AND	AUCKLAND HIGH COURT First Respondent
AND	ATTORNEY-GENERAL Second Respondent
AND	NEW ZEALAND POLICE Third Respondent

Court: Glazebrook, Williams and Kós JJ

Counsel: Applicant in person
M L Clarke-Parker for Respondents

Judgment: 17 February 2023

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant must pay the respondents costs of \$2,500.

REASONS

Introduction

[1] Ms Dunstan applies for leave to appeal against the decision of the Court of Appeal in *Dunstan v Auckland High Court*.¹

¹ *Dunstan v Auckland High Court* [2022] NZCA 478 (Katz, Wylie and Palmer JJ) [CA judgment].

Background

[2] Ms Dunstan was arrested on 25 June 2019 for an alleged breach of a temporary protection order. The charge was subsequently withdrawn and Ms Dunstan filed a proceeding in the District Court alleging malicious prosecution in respect of her arrest. She unsuccessfully sought summary judgment and the matter proceeded to a full hearing.²

[3] While the District Court proceedings were ongoing, Ms Dunstan filed a mirror proceeding in the High Court, also seeking summary judgment, against the New Zealand Police and the Attorney-General. This mirror proceeding was struck out by the High Court under r 5.35B of the High Court Rules 2016 on the basis that it was an abuse of process.³

[4] The Court of Appeal dismissed Ms Dunstan's appeal against that decision, saying:⁴

... it is plainly an abuse of process for Ms Dunstan to seek to concurrently pursue malicious prosecution proceedings against the New Zealand Police and/or the Attorney-General, arising out of the same facts, in both the District Court and the High Court.

Our assessment

[5] The criteria for leave are not met.⁵ The application must be dismissed on the basis that it is an abuse of process.

Result

[6] The application for leave to appeal is dismissed.

[7] The applicant must pay the respondents costs of \$2,500.

Solicitors:
Meredith Connell, Auckland for Respondents

² *Dunstan v Police* [2021] NZDC 23770 (Judge Clark).

³ *Dunstan v Attorney-General* [2022] NZHC 674 (Gault J).

⁴ CA judgment, above n 1, at [16].

⁵ Senior Courts Act 2016, s 74(2).