

NOTE: COURT OF APPEAL ORDER PROHIBITING PUBLICATION OR NAMES OR IDENTIFYING PARTICULARS OF THE PARTIES AND THE CHILDREN REMAINS IN FORCE.

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 122/2022
[2023] NZSC 5**

BETWEEN D (SC 122/2022)
Applicant

AND JDN
Respondent

Court: Glazebrook, Williams and Kós JJ

Counsel: Applicant in person

Judgment: 17 February 2023

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] Ms D filed a habeas corpus application in the High Court on her own behalf and on behalf of her children. Her contention is that orders made by the Family Court with regard to the sharing of the care of her children with her former partner mean she and the children are unlawfully detained in New Zealand. The High Court dismissed her application.¹

¹ *Re [D]* [2022] NZHC 2317 (Venning J).

[2] The Court of Appeal struck out her appeal against the High Court's decision under r 44A of the Court of Appeal (Civil) Rules 2005, holding it to be on an abuse of process.²

[3] Ms D seeks leave to appeal to this Court against that decision.

[4] In its decision, the Court of Appeal noted this was not the first occasion Ms D had sought habeas corpus on essentially the same grounds.³ Those earlier proceedings had culminated in an application for leave to appeal to this Court, which was held to be an abuse of process.⁴ The Court of Appeal said that the reasons that this Court had previously found there to be an abuse of process apply equally to this present case.⁵

[5] We agree.

Result

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

[7] As the respondent did not file submissions, we make no order as to costs.

² *DFT v JDN* [2022] NZCA 567 (Goddard and Katz JJ) [CA judgment].

³ At [9].

⁴ *D (SC 83/2021) v High Court Auckland* [2021] NZSC 96 (William Young, Glazebrook and Williams JJ).

⁵ CA judgment, above n 2, at [11]–[12].