

NOTE: GIVEN THE REFERENCE TO EARLIER PROCEEDINGS PURSUANT TO S 437A OF THE ORANGA TAMARIKI ACT 1989, ANY REPORT OF THIS JUDGMENT MUST COMPLY WITH SS 11B, 11C AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE <https://www.justice.govt.nz/family/about/restriction-on-publishing-judgments/>

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 17/2023
[2023] NZSC 54**

BETWEEN

MC (SC 17/2023)
Applicant

AND

FAMILY COURT AT MANUKAU
First Respondent

CHIEF EXECUTIVE OF ORANGA
TAMARIKI | MINISTRY FOR CHILDREN
Second Respondent

Court: O'Regan, Ellen France and Kós JJ

Counsel: Applicant in person
D L Harris and T Li for First Respondent
L M Jackson for Second Respondent

Judgment: 15 May 2023

JUDGMENT OF THE COURT

- A** The application for an extension of time to apply for leave to appeal against the High Court judgment (*MC v Family Court at Manukau* [2022] NZHC 870) is dismissed.
- B** The application for leave to appeal against the Court of Appeal judgment (*MC (CA266/2022) v Manukau Family Court* [2022] NZCA 571) is dismissed.
- C** The applicant must pay the second respondent costs of \$2,500.
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REASONS

[1] The applicant was dissatisfied with a judgment of the Family Court placing her children in the care of Oranga Tamariki | Ministry for Children (Oranga Tamariki), making the second respondent—the Chief Executive of Oranga Tamariki—an additional guardian of the children and determining that there was no realistic possibility of the return of the children to the applicant’s care.¹ She appealed to the High Court, but the appeal was dismissed.² The applicant did not seek leave for a further appeal. She commenced judicial review proceedings in the High Court, but these were struck out.³

[2] More than a year after her appeal and judicial review proceedings had been dismissed, the applicant commenced proceedings in the High Court claiming in tort against the first respondent—the Family Court at Manukau—and the second respondent. The second respondent applied for these claims to be struck out. In a judgment delivered in April 2022, the High Court ruled that the proceeding was an abuse of process and struck it out.⁴ We will call that judgment the 2022 High Court judgment.

[3] The applicant filed a notice of appeal against the 2022 High Court judgment in the Court of Appeal. Security for costs was set at \$7,060.00. The applicant applied for security for costs to be dispensed with. The Registrar of the Court of Appeal declined the application. The applicant then sought a review of the Registrar’s decision. Miller J dismissed the application for review, agreeing with the Registrar that the proposed appeal was an appeal that no reasonable and solvent litigant would pursue and that it had no chance of success because the proceeding was clearly an abuse of process.⁵ We will call Miller J’s judgment the Court of Appeal judgment. As the applicant did not pay the required security for costs, her appeal was deemed to be abandoned under r 43 of the Court of Appeal (Civil) Rules 2005.

¹ *Chief Executive, Oranga Tamariki – Ministry for Children v JA* [2018] NZFC 4705 (Judge Malosi).

² *MC v The Chief Executive, Oranga Tamariki* [2020] NZHC 50 (Hinton J).

³ *MC v Chief Executive of Oranga Tamariki, Ministry for Children* [2020] NZHC 296, (2020) 25 PRNZ 162 (Palmer J).

⁴ *MC v Family Court at Manukau* [2022] NZHC 870 (Gault J) [2022 HC judgment].

⁵ *MC (CA266/2022) v Manukau Family Court* [2022] NZCA 571.

[4] The applicant applies to this Court for leave to appeal directly to this Court against the 2022 High Court judgment. Since her application for leave is out of time, we also treat her application as an application for an extension of time to bring that application for leave. She also asks the Court to set aside the imposition of security for costs: we will treat that as an application for leave to appeal against the Court of Appeal judgment, as this Court cannot otherwise make a decision relating to security for costs in the Court of Appeal. The applications are opposed by the second respondent. The first respondent abides the decision of the Court.

[5] This Court may not grant leave for a direct appeal to this Court from a judgment of the High Court unless the interests of justice criteria in s 74 of the Senior Courts Act 2016 are met and, in addition, there are exceptional circumstances that justify taking the proposed appeal directly to the Supreme Court (s 75 of the Act). In this case, there are no exceptional circumstances. The only reason the applicant seeks a direct appeal to this Court against the 2022 High Court judgment is that she did not pay security for costs to allow her appeal to the Court of Appeal to proceed. That is not an exceptional circumstance. In any event, the proposed appeal does not meet the interests of justice test in s 74 either: no matter of public importance arises and there is no appearance of a miscarriage of justice. The proceeding is an abuse of process and it is not in the interests of justice to prolong it.

[6] As the criteria for the grant of leave are not met, there is no point in granting an extension of time to apply for leave to appeal against the 2022 High Court judgment.

[7] Nor is there a basis on which leave could be granted to appeal against the Court of Appeal judgment. Miller J applied settled law in his decision on security for costs. It is not in the interests of justice for leave to be granted: no matter of public importance arises and there is no appearance of a miscarriage of justice.⁶

[8] The application for an extension of time to apply for leave to appeal against the 2022 High Court judgment is dismissed.

⁶ Senior Courts Act 2016, s 74(2)(a) and (b).

[9] The application for leave to appeal against the Court of Appeal judgment is dismissed.

[10] The applicant must pay the second respondent costs of \$2,500.

Solicitors:

Crown Law Office, Wellington for First Respondent

Rachael Dewar Law, Wellington for Second Respondent