

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC UR 11/2023  
[2023] NZSC 90

BETWEEN DERMOT GREGORY NOTTINGHAM  
First Applicant

ROBERT EARLE MCKINNEY  
Second Applicant

AND ATTORNEY-GENERAL  
Respondent

Counsel: Applicants in person

Judgment: 27 July 2023

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**JUDGMENT OF O'REGAN J**

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**The application for review of the decision of the Deputy Registrar declining to waive the filing fee is upheld and the waiver is granted.**

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**REASONS**

[1] Mr Nottingham and Mr McKinney, the applicants, filed an application for leave to appeal to this Court against a decision of the Court of Appeal.<sup>1</sup> In that decision, the Court of Appeal dismissed the applicants' application for an extension of time to apply for the allocation of a hearing date and file the case on appeal for their proposed appeal to that Court.

[2] The applicants had wished to appeal to the Court of Appeal against a decision of the High Court.<sup>2</sup> The High Court had made an award of costs and disbursements in favour of the respondent, the Attorney-General, following an earlier decision striking

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<sup>1</sup> *Nottingham v Attorney-General* [2023] NZCA 122 (Brown and Clifford JJ).

<sup>2</sup> *Nottingham v Attorney-General* [2022] NZHC 1060 (Woolford J).

out the applicants' applications for judicial review, declaratory orders and a writ of habeas corpus challenging certain actions taken by the Government in response to the COVID-19 pandemic.<sup>3</sup>

[3] At the same time as the applicants filed their application for leave to appeal to this Court, they also filed an application for a fee waiver.

[4] The Deputy Registrar of this Court refused the fee waiver. He noted that the application for waiver was based on two alternative grounds.

[5] The first of these was that reg 5(2)(b) of the Supreme Court Fees Regulations 2003 (the Regulations) applied. This was on the basis that the proposed appeal to this Court concerned a matter of general and public interest and that it was unlikely to be commenced or continued unless the fee was waived. The Deputy Registrar considered that the proposed appeal against the Court of Appeal judgment (dealing with the application to extend the time for seeking a fixture and filing the case on appeal) did not raise a question of law that was of significant interest to the public or to a substantial section of the public. He considered that the "genuine public interest" criterion was not met, and thus it was not necessary to consider whether the proceeding would be unlikely to be commenced unless the fee were waived.<sup>4</sup>

[6] The second ground on which the waiver was sought was under reg 5(3)(b)(iii) of the Regulations. This provides that a waiver may be granted if the applicant has not been granted legal aid and would suffer undue financial hardship if he or she paid the fee. The Deputy Registrar was not satisfied that this criterion was met in relation to either applicant. He set out the reasons for this.

[7] The applicants challenge the Deputy Registrar's decision in relation to both grounds.

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<sup>3</sup> *Nottingham v Attorney-General* [2022] NZHC 405 (Woolford J).

<sup>4</sup> Supreme Court Fees Regulations 2003, reg 5(2)(b)(i).

[8] In relation to the first ground, I agree with the Deputy Registrar that the proposed appeal does not raise any matter of public importance. Rather, it concerns particular procedural aspects of appeals to the Court of Appeal as applied to the specific circumstances of the applicants' appeal.

[9] In relation to the second ground, Mr Nottingham indicated in the request for a review that he considered that the Deputy Registrar had made incorrect assumptions about Mr Nottingham's outgoings. No details were provided as to why the Deputy Registrar was incorrect. At my request, the applicants filed further submissions, but Mr Nottingham did not provide any detail rebutting the assumptions, apart from addressing the issue of rent payments.

[10] In Mr McKinney's case, the Deputy Registrar noted the waiver application referred to statements for four bank accounts being attached, but only one was in fact attached. This was mistaken: in fact, there were bank statements from four accounts produced.

[11] I have reviewed all the information provided and conclude that, on the information provided by the applicants, there is a sufficient basis to grant them both a fee waiver under reg 5(3)(b)(iii) of the Regulations.

[12] I uphold the review and grant fee waivers to both applicants. Their application for leave to appeal can now be accepted for filing.