

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 73/2023  
[2023] NZSC 96

IN THE MATTER OF TANYA FELICITY DUNSTAN  
Applicant

Court: Ellen France, Williams and Kós JJ  
Counsel: Applicant in person  
D L Harris and R E R Gavey for Auckland High Court  
Judgment: 31 July 2023

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JUDGMENT OF THE COURT

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- A The application for leave to appeal is dismissed.**
- B The Auckland High Court is removed as a respondent.**
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REASONS

**Introduction**

[1] Ms Dunstan has filed an application for leave to appeal directly to this Court from a decision of the High Court. The decision is set out in the minute of Powell J of 14 June 2023. Ms Dunstan has also filed what is described as an application for this Court to make a declaration and an order for mandamus.

**Background**

[2] The minute of 14 June 2023 is one of a number issued by Powell J in the context of various proceedings brought by Ms Dunstan in the High Court. The minute records that the Judge was not prepared to deal with documents Ms Dunstan sought to file relating to various interlocutory minutes. That was against the background of the

Judge having told Ms Dunstan that if she wished to have various matters considered, a formal application with supporting memorandum was to be filed so that the relevant documentation was served on the parties to the particular proceedings. The material filed by Ms Dunstan did not comply with the earlier direction and the Judge saw this as a further abuse of process. The documents were to be returned to Ms Dunstan.

### **The proposed appeal**

[3] Ms Dunstan seeks leave to appeal from the minute of 14 June 2023 on the basis, amongst other matters, that it is a breach of natural justice and prevents her from exercising her “right” of appeal.

[4] The declaration and order for mandamus are sought on an ex parte basis on various grounds, including the submission that Ms Dunstan’s interlocutory applications in the High Court are being obstructed from any “right” of appeal due to refusals to grant her leave to appeal.

[5] The relevant criteria for an appeal directly to this Court are twofold: first, the Court must be satisfied it is necessary in the interests of justice for the Court to hear the appeal and, second, that there are exceptional circumstances justifying a direct appeal.<sup>1</sup> For a number of reasons, we are satisfied the leave criteria are not met.

[6] First, it is apparent on the face of the record that Powell J has not declined leave. The Judge has, rather, made it clear what Ms Dunstan needs to do if she wishes to pursue her applications for leave to appeal. Second, if there had been a decision to decline leave to appeal, s 69(b) of the Senior Courts Act 2016 would apply. That section provides this Court has no jurisdiction to hear Ms Dunstan’s proposed appeal from a refusal by the High Court to give leave to appeal to the Court of Appeal. The proper avenue where the High Court refuses leave in these circumstances is to seek leave to appeal from the Court of Appeal. Third, Ms Dunstan refers to a number of other “interlocutory” minutes. Section 69(c) of the Senior Courts Act says that this Court may not hear an appeal by a party to a civil proceeding in the High Court against a decision made on an interlocutory application. Finally, even assuming there is

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<sup>1</sup> Senior Courts Act 2016, ss 75(2)(a) and 75(2)(b).

jurisdiction, there is no appearance of a miscarriage of justice.<sup>2</sup> The underlying concern of the Judge was an orthodox one, namely, to ensure the parties were served.

[7] The matters advanced by Ms Dunstan in support of the ex parte orders sought are diffuse and unclear. They do not provide any basis for intervention by this Court, even assuming there would be any jurisdiction to do so.

[8] The application for leave refers to the Auckland High Court as a respondent. As counsel for the Court submits, the appropriate respondents are the underlying parties to the proceeding dealt with by Powell J in the minute. The Auckland High Court is removed as a respondent on the basis that it has been improperly joined. In view of our decision on the application for leave, there is no point in requiring service on the underlying parties.

## **Result**

[9] The application for leave to appeal is dismissed. The Auckland High Court is removed as a respondent.

Solicitors:  
Crown Law Office, Wellington for Auckland High Court

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<sup>2</sup> Section 74(2)(b).