

NOTE: PURSUANT TO S 139 OF THE CARE OF CHILDREN ACT 2004, ANY REPORT OF THIS PROCEEDING 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/>

NOTE: HIGH COURT ORDER ([2021] NZHC 2080) PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF THE APPLICANT AND THE THIRD RESPONDENT IN CA431/2022 REMAINS IN FORCE.

NOTE: HIGH COURT ORDER ([2021] NZHC 2326) PROHIBITING PUBLICATION OF NAMES OR IDENTIFYING PARTICULARS OF THE APPLICANT AND RESPONDENT [N] IN CA5/2023 REMAINS IN FORCE.

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 64/2023
[2023] NZSC 99**

BETWEEN

D (SC 64/2023)
Applicant

AND

N (SC 64/2023) AND OTHERS
(CA431/2022, CA449/2022, CA452/2022,
CA522/2022, CA556/2022, CA692/2022,
CA5/2023, CA6/2023, CA7/2023 AND
CA104/2023)
Respondents

Court: Glazebrook, Williams and Kós JJ

Counsel: Applicant in person
No appearance for Respondents

Judgment: 8 August 2023

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B There is no order as to costs.

REASONS

[1] The applicant seeks leave to appeal against the decision by Cooper P recorded in a minute dated 17 May 2023. The President of the Court of Appeal dismissed applications to recuse three judges of that Court (Brown, Goddard and Katz JJ) from dealing with 10 appeals pursued by the applicant in that Court. Some have been determined and some are described by the President as “at various points in the appeal process”.

[2] The Judge’s decision was as follows:

[8] I am satisfied that nothing in the applications filed by [the applicant] is capable of providing a proper basis for any of the three Judges to recuse themselves in respect of all matters in which [the applicant] is a party. [The applicant] is dissatisfied with the way in which various applications and appeals before this Court have been determined. However that dissatisfaction is not a basis for recusal. Nothing in the applications suggests there is a real possibility that in the eyes of a fair-minded and fully informed observer any of the three Judges may not be impartial in reaching a decision in appeals to which [the applicant] is a party.

[9] Nor do the applications identify any reasonable basis for thinking that any of the three Judges has a conflict of interest in connection with all appeals to which [the applicant] is a party.

[10] I therefore decline to make any order or give any direction in relation to the participation of any of the three Judges in matters to which [the applicant] is a party.

[3] That said, the Judge noted that should proper grounds arise in the context of any particular appeal, they should be addressed in that context:

[11] If there is a proper basis for recusal of one or more judges in connection with a specific appeal to which [the applicant] is a party, that is an issue that can and should be dealt with in accordance with the Court of Appeal Recusal Guidelines issued under s 171 of the Senior Courts Act 2016, if and when the issue arises. However I remind [the applicant] that a recusal application should only be made in the context of a specific application or appeal to which a judge has been assigned, in circumstances where there is a factual foundation for suggesting there is a real possibility that in the eyes of a fair-minded and fully informed observer that judge may not be impartial in reaching a decision. A view that previous decisions involving that judge were unfair, however firmly held, is not a proper foundation for such an application.

[4] We note as an aside that the Attorney-General enquired as to whether he could provide any assistance with respect to the leave application. Having considered the material, we do not find it necessary to seek submissions from the Attorney-General.

Submissions

[5] In her submissions, the applicant reprises those made before Cooper P. She adds further that it was for the three named Judges to respond to the applications, and not for the President (although, we note, she asked the applications be referred to the President).

Decision

[6] The criteria for leave provided in s 74 of the Senior Courts Act 2016 are not met.

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

[8] As there was no need to hear from the respondents, there is no order as to costs.