

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC UR 46/2023
[2024] NZSC 1

BETWEEN VINCENT ROSS SIEMER
 Applicant

AND ATTORNEY-GENERAL
 Respondent

Counsel: Applicant in person

Judgment: 30 January 2024

JUDGMENT OF KÓS J

- A The application for recall of my judgment of 12 December 2023 (*Siemer v Attorney-General* [2023] NZSC 165) is dismissed.**
- B The application for recusal is dismissed.**
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REASONS

[1] Mr Siemer has filed an application for recall of my judgment of 12 December 2023 upholding a decision of the Registrar declining to waive the filing fee on an application for leave to appeal Mr Siemer seeks to bring against a decision of the Court of Appeal concerning security for costs in an appeal in that Court.¹

[2] The sole question for my determination was whether Mr Siemer fell within either reg 5(2)(a) or (b) of the Supreme Court Fees Regulations 2003. The latter was advanced for the first time on review before me.

¹ *Siemer v Attorney-General* [2023] NZSC 165.

[3] I found Mr Siemer did not fall within reg 5(2)(a), because he had not demonstrated he was wholly dependent for payment of his living expenses on New Zealand superannuation. That criterion is imposed by reg 5(3)(b)(ii), on which he relied. The requirement of being “wholly dependent” is prescribed in contradistinction of merely being “dependent” in reg 5(3)(b)(i).

[4] I also found that Mr Siemer did not fall within reg 5(2)(b) because he had not established that his proposed appeal was unlikely to be commenced or continued unless the fee was waived.

[5] A judgment will only be recalled in exceptional circumstances, being those identified in *Horowhenua County v Nash (No 2)*, as applied by this Court in *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd (No 2)*.² A recall application cannot be used to relitigate the reasons for refusing leave.³

[6] Mr Siemer’s arguments on recall seek only to relitigate the original reasons for judgment. They neither engage the prescriptive criteria in *Horowhenua* nor address the evidential deficiencies which saw review declined. The application for recall must therefore be declined.

[7] Mr Siemer also sought that I recuse myself because of the asserted errors in the judgment. It is of the nature of recall that the application is addressed to the judge or judges who made the decision. It is not an appeal. The application for recusal must therefore also be declined.

Result

[8] The application for recall is dismissed.

[9] The application for recusal is dismissed.

² *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC) at 633; *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd (No 2)* [2009] NZSC 122, [2010] 1 NZLR 76 at [2]; and *Green Growth No 2 Ltd v Queen Elizabeth the Second National Trust* [2018] NZSC 115 at [20].

³ *Nuku v District Court at Auckland* [2018] NZSC 39 at [2]; and *Jones v New Zealand Bloodstock Finance and Leasing Ltd* [2023] NZSC 133 at [10].