

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 85/2024
[2024] NZSC 142

BETWEEN DHARMENDRA MAHETA
Applicant

AND CHRISTOPHER JOHN GRIGGS
Respondent

Court: Glazebrook, Ellen France and Williams JJ

Counsel: Applicant in person
Respondent in person

Judgment: 23 October 2024

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant must pay the respondent costs of \$2,500.

REASONS

Introduction

[1] Mr Maheta is engaged in proceedings in the Employment Court relating to an employment dispute with his former employer. Mr Maheta sought leave to appeal to the Court of Appeal against a decision of the Employment Court granting his then lawyer, Mr Griggs, leave to withdraw as counsel in those proceedings.¹

[2] Mr Maheta's application for leave to appeal against that decision was dismissed by the Court of Appeal on 19 June 2024.² In that judgment, costs were

¹ *Maheta v Skybus New Zealand Ltd, Formerly Airbus Express Ltd* EmpC 476/2019, 19 September 2023 (Minute No 1) (Judge Beck) at [33].

² *Maheta v Griggs* [2024] NZCA 242 (French and Ellis JJ) [CA judgment] at [8].

awarded to Mr Griggs but also to Mr Maheta's former employer. That employer had originally been named as first respondent and sought costs incurred for work up until it was removed as a respondent. The Court was not persuaded to impose any uplift on the costs awarded.³

[3] Mr Maheta now seeks leave to appeal to this Court.

Grounds of application

[4] Mr Maheta submits that he was not given a proper opportunity to respond and be heard in the Courts below. He also says that the Court of Appeal made contradictory orders on costs. He says that Mallon J, by minute of 13 November 2023, had ordered that no costs were to be awarded to his former employer when directing its removal from the proceeding.⁴ He says that his proposed appeal would have wider precedential value and is thus of public and general importance.

[5] In reply, Mr Griggs points to s 68(b) of the Senior Courts Act 2016 and submits that this Court cannot grant an application for leave to appeal against a Court of Appeal decision refusing leave to appeal. He also submits that the minute of Mallon J said only that she made no order for costs at that preliminary stage. The minute did not fix costs. Mr Griggs says that, in any event the leave criteria would not be met. In these circumstances he asks for increased or indemnity costs.

Our assessment

[6] Mr Griggs is correct. This Court has no jurisdiction to entertain an application for leave to appeal against a judgment of the Court of Appeal declining leave to appeal. In any event, the criteria for leave to appeal to this Court are not met. The proposed appeal relates to the particular circumstances of Mr Maheta's case and raises no issue of general or public importance.⁵ Nor do the matters raised by Mr Maheta mean that there is a risk of a miscarriage of justice.⁶

³ At [6]–[7].

⁴ *Maheta v Griggs* CA612/2023, 13 November 2023.

⁵ Senior Courts Act 2016, s 74(2)(a).

⁶ Section 74(2)(b). That is, a miscarriage in the sense required in civil cases: see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

[7] While Mr Griggs has been put to the trouble of filing submissions and is entitled to costs, the issues were very confined and we do not consider that increased or indemnity costs are appropriate.⁷

Result

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

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

⁷ While Mr Griggs was making submissions as a respondent to the application, we consider it is nevertheless appropriate to make an award of costs in his favour in the circumstances of this case.