

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 149/2023
[2024] NZSC 52

BETWEEN CHRISTOPHER JOSEPH O'NEILL
Applicant
AND CHRISTOPHER JOHN HIPKINS
First Respondent
AND DAVID WILLIAM PARKER
Second Respondent

Court: Glazebrook and Kós JJ
Counsel: Applicant in person
No appearance for Respondents
Judgment: 9 May 2024

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
B There is no order as to costs.
-

REASONS

Introduction

[1] Mr O'Neill applies for leave to appeal against a decision of the Court of Appeal¹ striking out his appeal against a judgment of the High Court.²

¹ *O'Neill v Hipkins* [2023] NZCA 572 (Mallon, Fitzgerald and Churchman JJ) [CA judgment].

² *O'Neill v Hipkins* [2023] NZHC 2594 (Walker J) [HC judgment].

Procedural history

[2] In 2022, Mr O’Neill initiated judicial review proceedings against the decision of the Judicial Conduct Commissioner dismissing complaints Mr O’Neill made against a number of judges as being vexatious. In 2022, the High Court struck out the proceedings as an abuse of process.³

[3] On appeal to the Court of Appeal, Mr O’Neill failed to appear because he was apparently isolating after contracting COVID-19. The Court of Appeal required him to provide a medical certificate if he was not going to appear again at a rescheduled hearing. He did not do so. The Court of Appeal eventually dealt with the appeal on the papers.⁴

[4] This Court denied leave to appeal. Although the Court accepted that the requirement to produce a medical certificate may be an issue of general or public importance, it considered that, as the underlying proceedings had been held by both the High Court and the Court of Appeal to be an abuse of process, this was not a suitable case to grant leave on the medical certificate issue.⁵

[5] On 4 August 2023, Mr O’Neill filed documentation in the High Court purporting to be a judicial review claim against the then Prime Minister and Attorney-General and claiming that the Government’s COVID-19 policies impacted his right of access to justice.

[6] On 17 August 2023, the High Court Registry returned the documents to Mr O’Neill on the basis they were not compliant with the High Court Rules 2016. Mr O’Neill returned the documents for filing on 21 August 2023 on the basis that they had been wrongly rejected. He also filed an interlocutory application without notice, requiring a judicial decision on whether the documents should be accepted for filing.

³ *O’Neill v Ritchie* [2022] NZHC 1225. We note that another proceeding had been filed in the High Court in 2022 alleging misconduct of High Court Judges and the Registry and similarly struck out as an abuse of process, see: *O’Neill v The Judiciary of Auckland High Court* [2023] NZSC 105.

⁴ *O’Neill v Judicial Conduct Commissioner* [2023] NZCA 152.

⁵ *O’Neill v Judicial Conduct Commissioner* [2023] NZSC 88 at [4].

[7] Although the documents were still non-compliant with the High Court Rules, the Registrar pragmatically accepted the documents for filing and referred both applications to Walker J under r 5.35A of the High Court Rules 2016.⁶ This rule allows the Registrar to refer a plainly abusive proceeding to a judge before service. The judge is then empowered under r 5.35B to make orders dealing with the proceeding.

High Court decision

[8] Walker J struck out the proceedings on 18 September 2023, determining it “would be manifestly unfair to require the respondents to respond to Mr O’Neill’s allegations”.⁷ Walker J recognised that the powers under r 5.35B are to be exercised sparingly and only where the abuse is clear beyond doubt.⁸ Nonetheless, Walker J characterised the pleading as:⁹

... a collateral attack on judgments of the Court of Appeal and Supreme Court. The generalised references to the Government’s COVID-19 response and lack of particularisation of any reviewable decision are telling. His real complaint is with the outcome in the Court of Appeal and Supreme Court. To permit this proceeding to remain on foot would amount to an abuse of process.

[9] Walker J also determined the interlocutory application seeking a judicial decision on acceptance of the documents was moot because the documents had ultimately been accepted for filing.¹⁰

Court of Appeal decision

[10] Mr O’Neill appealed to the Court of Appeal against the High Court decision. He expressed general disagreement with Walker J’s decision and also claimed the Prime Minister and Attorney-General breached the New Zealand Bill of Rights Act 1990.¹¹ He requested the entire Court to recuse itself and return the case to the High Court for hearing.¹² He also drew attention to this Court’s comment that the

⁶ HC judgment, above n 2, at [3] and [9]

⁷ At [19].

⁸ At [11].

⁹ At [18].

¹⁰ At [9].

¹¹ CA judgment, above n 1, at [9]–[13].

¹² At [14].

requirement for a medical certificate may be a matter of general or public importance.¹³

[11] On 16 October 2023, the Court of Appeal notified Mr O’Neill of its intention to consider striking out the appeal under r 44A of the Court of Appeal (Civil) Rules 2005 on the ground that it appeared to be an abuse of the process of the Court. Mr O’Neill was given the opportunity to make submissions.¹⁴

[12] On 17 November 2023, the Court of Appeal struck out the appeal as an abuse of process.¹⁵ The Court determined there was nothing of substance in Mr O’Neill’s claims and that Walker J’s judgment was an orthodox application of r 5.35B. The Court also agreed the interlocutory application was rendered moot. The Court said:¹⁶

[18] In respect of the appeal against Walker J’s decision striking out the judicial review application, we consider that none of Mr O’Neill’s submissions have any merit. He makes wide-ranging serious allegations, including of criminality and corruption. There is simply nothing put forward to support any of the various claims he makes, such as the judgment being produced “in panic” or of it being “communistic”. The judgment is an orthodox application of r 5.35B of the High Court Rules.

[19] Mr O’Neill places significant weight on the comment made by the Supreme Court that the requirement for a medical certificate to be produced “may” be a matter of general or public importance. However, this was simply one factor the Supreme Court said could be taken into account in deciding whether to grant leave to appeal.

[20] Although Mr O’Neill considers that the Supreme Court judgment declining his application for leave to appeal supports his position that he is entitled to be heard in the High Court, this is clearly not the case. The Court did not say the requirement for a medical certificate *was* a matter of general or public importance and the Court did not have to decide whether such a requirement *was* in fact inappropriate or unlawful. The Court decided not to grant leave to appeal, in particular because, “[g]iven the abuse of process involved in the proceeding”, the Court saw “no appearance of a miscarriage in refusing leave to appeal”.¹⁷ The comment of the Supreme Court as to there potentially being a question of general or public importance therefore does not in fact support Mr O’Neill’s position that he is entitled to be heard in the High Court.

[21] Walker J was correct to find that the judicial review application appears to be a collateral attack on the judgments of this Court and the

¹³ At [11].

¹⁴ At [3].

¹⁵ At [23].

¹⁶ Emphasis in original.

¹⁷ *O’Neill v Judicial Conduct Commissioner*, above n 5, at [4].

Supreme Court, and that to allow the proceeding to continue would be an abuse of process. We agree that it would be manifestly unfair to require the respondents to respond to the allegations or treat the proceeding as a proceeding of the court. Mr O'Neill's claims are specious, entirely untenable and unsupported by any evidence. Walker J's decision is unimpeachable. We consider that to allow the appeal "would strike at the public confidence in the Court's processes", in the words of this Court in *Moevao v Department of Labour*.¹⁸ The appeal is an abuse of process and is struck out under r 44A of the Court of Appeal (Civil) Rules.

Grounds of proposed appeal

[13] Mr O'Neill broadly reprises the arguments he made in the Court of Appeal.

Our assessment

[14] Nothing raised by Mr O'Neill suggests that the decisions of the Courts below were wrong. The application for leave to appeal is an abuse of process and must be dismissed.

Result

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

[16] As the respondents were not required to file submissions, there is no order for costs.

¹⁸ *Moevao v Department of Labour* [1980] 1 NZLR 464 (CA) at 482.