**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI O AOTEAROA**

**SC 59/2025**
**[2025] NZSC 107**

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| BETWEEN | | MARK ANTHONY WHITTINGTON<br>Applicant |
| AND | | SOLICITOR-GENERAL<br>Respondent |

Court: Glazebrook, Kós and Miller JJ

Counsel: Applicant in person
I M G Clarke for Respondent

Judgment: 25 August 2025

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**JUDGMENT OF THE COURT**

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**A The application for leave to appeal is dismissed.**

**B The applicant must pay the respondent costs of $1,500.**

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**REASONS**

## Background

[1] Mr Whittington sought to challenge an Acting Deputy Solicitor-General's refusal to order a coronial inquiry into the death of his mother, Carol Ann Whittington. That refusal was confirmed by the Deputy Solicitor-General. In May 2024, the High Court declined Mr Whittington's application for judicial review, finding the refusal decisions were "reasonable, lawful, and valid".[1]

[1] *Whittington v Solicitor-General* [2024] NZHC 1314 (Palmer J) at [14]–[15].

[2] Mr Whittington sought leave to appeal the High Court's judgment direct to this Court, but leave was refused on 5 August 2024.[2] The proposed appeal raised no issues of general or public importance, nor any risk of a miscarriage of justice as that term applies in the civil context.[3] It also lacked exceptional circumstances justifying a direct appeal to this Court.[4]

[3] Mr Whittington then applied for an extension of time to appeal the High Court judgment in the Court of Appeal. That Court, applying the test set out in *Almond v Read*, declined the application:[5] the delay was substantial, being more than six months after the expiry of the period set out in r 29(1)(a) of the Court of Appeal (Civil) Rules 2005; this Court had already found there was no risk of a miscarriage of justice; and the proposed appeal had no prospect of success.[6]

[4] Still seeking to have his substantive appeal heard, Mr Whittington now applies for leave to appeal the Court of Appeal's extension of time decision to this Court. He submits the Court of Appeal acted unreasonably and reached a decision which was "plainly wrong".[7] He says the Court overlooked evidence of medical grounds for his delay in filing, including a letter from his doctor, and failed to properly inquire into alleged irregularities in the High Court which Mr Whittington claims amounted to a breach of his right to natural justice under s 27(1) of the New Zealand Bill of Rights Act 1990.

**Our assessment**

[5] The proposed appeal raises no matter of general or public importance.[8] The Court of Appeal applied settled principles, set out by this Court in *Almond v Read*, in considering Mr Whittington's application, and any challenge must turn on the particular facts of his case.[9]

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2 *Whittington v Solicitor-General* [2024] NZSC 93 (Glazebrook, Ellen France and Kós JJ) [SC leave judgment].
3 At [8]–[9].
4 At [10] citing Senior Courts Act 2016, s 75.
5 *Whittington v Solicitor-General* [2025] NZCA 175 (Courtney and Mallon JJ) at [8]–[14] citing *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801.
6 At [9] and [13].
7 Citing *May v May* (1982) 1 NZFLR 165 (CA) at 169–170.
8 Senior Courts Act, s 74(2)(a).
9 See *Almond v Read*, above n 5.

[6] Nor does the proposed appeal raise any risk of a substantial miscarriage of justice in the civil sense.[10] There is no evident error in the reasoning of the Court of Appeal. While it did not discuss the medical evidence offered by Mr Whittington, we accept the Solicitor-General's submission that this evidence, even if accepted in full, could not have changed the result. As this Court said in its earlier leave judgment, nothing raised by Mr Whittington suggested the High Court decision may have been wrong or that the process was unfair;[11] and the fact he was able to file that "leapfrog" application before the expiry of the appeal period under the Court of Appeal (Civil) Rules suggests any medical condition he may have had did not prevent him from filing an appeal in the Court of Appeal in time.[12]

[7] We again acknowledge Mr Whittington's genuine concern regarding the circumstances of his mother's death. The issues raised in his various applications have however been appropriately considered by the courts and by other decision-makers. It follows from the above that we do not consider it necessary in the interests of justice for this Court to hear and determine the proposed appeal.[13]

[8] The Solicitor-General has not previously sought costs. Now she does, submitting that "a contribution towards her costs on this further unmeritorious and unnecessary application is appropriate" and, accordingly, seeking costs "at a level deemed appropriate by the Court". We agree. Despite our sympathy for Mr Whittington, the lack of merit in his claim has long been evident, and costs must follow the event. We take the phrasing of the Solicitor-General's submission to invite a reduction from the normal scale, to which we accede. Costs of $1,500 will be ordered.

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10 Senior Courts Act, s 74(2)(b); and see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

11 SC leave judgment, above n 2, at [9].

12 The 20-working-day period for Mr Whittington to bring his appeal ended on 21 June 2024. He filed his leave application in this Court on 5 June 2024.

13 Senior Courts Act, s 74(1).

**Result**

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

[10] The applicant must pay the respondent costs of $1,500.

Solicitors:
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent