NOTE: PURSUANT TO S 437A OF THE ORANGA TAMARIKI ACT 1989, 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/family-court/after-the-family-court/restrictions-on-publishing-information/

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 74/2025
[2025] NZSC 127

BETWEEN	MS HENDERSON Applicant
AND	CHIEF EXECUTIVE OF ORANGA TAMARIKI—MINISTRY FOR CHILDREN Respondent

Court: Glazebrook, Kós and Miller JJ

Counsel: Applicant in person
S J Leslie and V E Squires for Respondent

Judgment: 30 September 2025

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

[1] This is an application for leave to appeal a decision of the Court of Appeal striking out an appeal as an abuse of process under r 44A(1)(c) of the Court of Appeal (Civil) Rules 2005.[1] The Court of Appeal took that course against the following background:

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[1] The applicant's name has been anonymised to protect the identity of her son, as it was below.

(a) In March 2023, the Family Court made care and protection orders giving Oranga Tamariki custody of Ms Henderson's son and appointing its Chief Executive as an additional guardian.[2]

(b) Ms Henderson appealed those orders to the High Court, but after her appeal was heard (and before judgment was given) she brought a separate proceeding in the High Court, this time challenging her son's detention by application for the writ of habeas corpus.

(c) The habeas corpus application was heard with the requisite urgency by Grice J on 2 October 2023 and dismissed the following day.[3] The Judge noted custody orders are amenable to challenge via habeas corpus proceedings "only in rare circumstances", and where such orders are validly made, "any challenges are more appropriately pursued by way of review [on appeal] or judicial review".[4] The orders appeared to be valid and lawful, despite the breakdown of a plan agreed under s 128 of the Oranga Tamariki Act 1989.[5]

(d) Later the same month, Grice J dismissed Ms Henderson's appeal against the Family Court's decision.[6]

(e) Ms Henderson then took the unusual course of appealing against the habeas corpus decision but not the substantive appeal judgment.[7] The Court of Appeal dismissed that appeal in February 2024, finding it was clear from the Oranga Tamariki Act that a breakdown in implementation of a s 128 plan "does not result in the orders becoming

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2 *Chief Executive of Oranga Tamariki – Ministry for Children v Henderson* [2023] NZFC 2167 (Judge David Smith).

3 *Henderson v Chief Executive of Oranga Tamariki* [2023] NZHC 2766.

4 At [10] citing *DE v Chief Executive of the Ministry of Social Development* [2007] NZCA 453, [2008] NZFLR 85, and *D (CA504/2020) v Adams* [2020] NZCA 454 at [9].

5 See at [11]–[15].

6 *Henderson v Oranga Tamariki—Ministry of Children* [2023] NZHC 3018 at [109]–[151].

7 *Adamson v Chief Executive of Oranga Tamariki* [2024] NZCA 52 (Collins, Woolford and Mander JJ) at [6].

unlawful"[8] and agreeing with the High Court's approach to assessing the validity of the orders.[9]

(f) In February 2025, Ms Henderson filed a fresh application for habeas corpus in the High Court, again challenging the lawfulness of her son's detention under the March 2023 Family Court orders.

(g) La Hood J dismissed that application, finding in respect of all but one of Ms Henderson's submissions that the issues raised could not be resolved via habeas corpus application and were in any case precluded by the res judicata doctrine from reconsideration in that Court.[10]

(h) Ms Henderson appealed that decision to the Court of Appeal.

[2] On 2 July 2025, the Court of Appeal struck out the appeal as an abuse of process under r 44A(1)(c) of the Court of Appeal (Civil) Rules.[11] The Court noted that "abuse of process" in this context captures a wide range of "instances of misuse of the Court's processes"[12], including claims which attempt "to relitigate matters that have already been determined".[13] It found that Ms Henderson was in substance relitigating matters already determined in the first habeas corpus proceeding, and that the issues she raised were in any case "plainly unsuited to summary determination on a habeas corpus application".[14]

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8 At [16].
9 At [20].
10 *Henderson v Chief Executive of Oranga Tamariki – Ministry for Children* [2025] NZHC 144 at [5]. On the one outstanding issue—a new allegation of failure by Oranga Tamariki to fix a date for review of the plan under s 138(1)—the Judge found that a date had in substance been fixed by way of a backup hearing date, and in any case a failure to do so would not invalidate the underlying orders: at [11]–[12].
11 *Henderson v Chief Executive of Oranga Tamariki—Ministry for Children* [2025] NZCA 293 (Mallon and Woolford JJ).
12 At [11] citing *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* [2013] NZCA 53, [2013] 2 NZLR 679 at [89].
13 At [11] citing *Forster v Dewar* [2024] NZHC 3995 at [17].
14 At [20].

[3] Ms Henderson seeks leave of this Court to appeal the strike-out decision. She says that decision wrongly concluded her grievances were better addressed through other mechanisms. She submits the miscarriage of justice and general or public importance grounds are engaged.

[4] The respondent opposes leave, submitting the proposed appeal is a collateral attack on the lower Courts' decisions. Counsel's instructions were also that Ms Henderson's son had been back in her day-to-day care since 25 July, raising the prospect that the appeal may be moot. (No evidence to that effect was tendered, and Ms Henderson's submissions do not confirm it, so we put that submission to one side.)

Assessment

[5] The criteria for leave to appeal to this Court in s 74 of the Senior Courts Act 2016 are not met.

[6] The proposed appeal raises no matter of general or public importance.[15] Ms Henderson does not point to any novel or significant issue concerning the Court of Appeal's approach to its strike-out powers under r 44A. Nor is there any evident error in the Court's exercise of those powers in this case. The appeal which was struck out arose in a second proceeding that was in substance the same as the earlier application which was dismissed by the High Court and then by the Court of Appeal on appeal, and was in that sense a collateral attack on the prior decisions of both Courts. In those circumstances there is no real risk of a substantial miscarriage of justice, as that expression is construed in a civil context, if leave is not granted.[16] It is not therefore necessary in the interests of justice for this Court to hear and determine the proposed appeal.[17]

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15 Senior Courts Act 2016, s 74(2)(a).

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

17 Senior Courts Act, s 74(1).

Result

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

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

Solicitors:
Luke Cunningham Clere, Wellington for Respondent