

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 9/2025
[2025] NZSC 67**

BETWEEN

**LYNETTE JOY MILLS
First Applicant**

**CARL JAMES PETERSON
Second Applicant**

AND

**KELLY DALZELL
First Respondent**

**TRACY LEVENBACH
Second Respondent**

**THE ASB BANK LIMITED
Third Respondent**

**GRAHAM HOWARD-MILLS
Fourth Respondent**

**JOHN LEVENBACH
Fifth Respondent**

**CAROL KRAMMER
Sixth Respondent**

**HOLLAND BECKETT LAW
Seventh Respondent**

**MORGAN COAKLE LAW FIRM
Eighth Respondent**

**ASSOCIATE JUDGE JOHNSTON
Ninth Respondent**

**JEREMY RUSSELL SPARROW
Tenth Respondent**

**SEBASTIAN THOMAS HARTLEY
Eleventh Respondent**

Court: Kós and Miller JJ

Counsel: Applicants in person
T J Conder for First, Third to Eighth, Tenth and Eleventh
Respondents

Judgment: 17 June 2025

JUDGMENT OF THE COURT

- A The applications for leave to file amended and further submissions are dismissed.**
- B The application for leave to appeal is dismissed.**
- C The applicants must pay the represented respondents one set of costs of \$2,500.**
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REASONS

[1] The proposed appeal here is against a decision of the Court of Appeal striking one appeal (served out of time) out for want of jurisdiction and declining extension of time for a second appeal (filed out of time).¹

[2] As the respondents submit, both appeals were attempts to continue a proceeding struck out by the High Court in 2022.² An appeal to the Court of Appeal was itself struck out for failure to pay security for costs in 2023,³ and leave to appeal to this Court was refused in 2024.⁴

[3] As to the appeals described above at [1]:

- (a) The first arose from new proceedings brought by the applicants in March 2024, which were struck out by Radich J as an attempt to relitigate the matters determined in the proceeding described above

¹ *Mills v Dalzell* [2024] NZCA 675 (Courtney and Cooke JJ) [CA judgment].

² *Mills v Dalzell* [2022] NZHC 2439.

³ *Mills v Dalzell* [2023] NZCA 458.

⁴ *Mills v Dalzell* [2024] NZSC 6.

at [2].⁵ The Court of Appeal said it was “beyond argument that the proceeding was an attempt to relitigate the allegations of fraud and misconduct that have previously been considered and rejected”.⁶ The sole new plea was one that ought to have been included in the original pleading, and could not now be raised.⁷ Quite apart from the need for extension of time, which had not been sought, the Court would otherwise have struck the new proceeding out as an abuse of process. It therefore struck the appeal out for want of jurisdiction.⁸

- (b) The second was an out-of-time appeal against a decision of Associate Judge Skelton declining to set aside a bankruptcy notice for costs arising from the same proceeding.⁹ The Court of Appeal found that appeal “clearly hopeless”.¹⁰

[4] Following the filing of their submissions, the applicants sought to file amended submissions and a further set of submissions, in one instance seeking leave to do so. We have read those submissions. They do not materially assist the applicants on their application for leave. Leave to file them will be dismissed.

[5] We have also read the principal submissions filed by the applicants. We are satisfied that nothing advanced in them meets the strict criteria for leave to appeal to this Court in the Senior Courts Act 2016. The sole ground that might be engaged is that in s 74(2)(b), namely the prospect of a substantial miscarriage of justice if the proposed appeal is not heard.¹¹ Having regard to the submissions filed, we do not discern the appearance of error in the analysis of the Court of Appeal. To the contrary, we are satisfied the proposed appeal would constitute an abuse of process. The application for leave to appeal will therefore be dismissed.

⁵ *Mills v Dalzell* [2024] NZHC 581.

⁶ CA judgment, above n 1, at [22].

⁷ At [24] citing *Henderson v Henderson* (1843) 3 Hare 100 at 115, 67 ER 313 (Ch) at 319, and *Commissioner of Inland Revenue v Bhanahbai* [2007] 2 NZLR 478 (CA) at [58]–[60].

⁸ CA judgment, above n 1, at [26].

⁹ *Mills v Mills* [2024] NZHC 733.

¹⁰ CA judgment, above n 1, at [30]. The same objection noted at [24] to the new plea raised in the first intended appeal applied also to the second: at [32].

¹¹ In the particular sense in which that expression applies in civil appeals: see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

[6] The represented respondents seek indemnity costs, but we are satisfied that costs in the ordinary amount are appropriate here, on this application at least.

Result

[7] The applications for leave to file amended and further submissions are dismissed.

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

[9] The applicants must pay the represented respondents one set of costs of \$2,500.

Solicitors:

Holland Beckett, Tauranga for First, Third to Eighth, Tenth and Eleventh Respondents