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IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC UR 30/2026
[2026] NZSC 125**

RE

MR VICKERS
Applicant

Counsel: Applicant in person

Judgment: 9 September 2026

JUDGMENT OF ELLEN FRANCE J

The application for review of the decision of the Registrar not to accept the application for leave to appeal for filing is allowed in part as set out in [10] below.

REASONS

Introduction

[1] The applicant has sought a review of the Registrar's decision to refuse to accept a proposed appeal for filing on the ground that the Court has no jurisdiction to consider it.¹ The decision from which leave to appeal is sought is a judgment of the Court of Appeal declining to grant leave to appeal decisions of the High Court staying the

¹ As was the case in the Court of Appeal, we have used a pseudonym in place of the applicant's name to meet the publication restrictions in s 139 of the Care of Children Act 2004 and ss 11B–11D of the Family Court Act 1980.

applicant's judicial review proceedings and ordering costs; and declining to grant an order staying execution of the High Court costs judgment.²

Background

[2] The applicant brought proceedings in the Family Court in relation to the custody and care of his young daughter. While that proceeding was ongoing, he filed judicial review proceedings in the High Court challenging decisions made by Oranga Tamariki in relation to his daughter's care. Oranga Tamariki successfully sought a stay in the High Court of the judicial review proceedings pending determination of the Family Court proceedings (the stay judgment).³ The Court essentially found the judicial review proceedings were duplicative of the Family Court proceedings and an abuse of process. The High Court declined to grant leave to appeal to the Court of Appeal against the stay judgment.⁴ The High Court subsequently awarded costs against the applicant.⁵

[3] The applicant then sought leave from the Court of Appeal to appeal from the stay judgment and made an application to stay the High Court costs order. The Court of Appeal in declining leave to appeal treated the stay judgment as one made on an interlocutory application.⁶ The application did not raise any question of general or public interest and, essentially, lacked merit as the stay was issued on a temporary basis. The High Court "made clear" the "right to pursue judicial review would remain available".⁷

[4] Leave to appeal from the High Court costs decision was also declined on the basis the proposed appeal was not seriously arguable. As a result, the Court said the application to stay the High Court costs award was moot. The Court said, in any event, no stay would have been granted noting that "Mr Vickers has now made several failed

² *Vickers v Chief Executive of Oranga Tamariki–Ministry for Children* [2026] NZCA 248 (Collins and Lang JJ) [CA judgment].

³ *Vickers v Chief Executive of Oranga Tamariki–Ministry for Children* [2025] NZHC 3690 (Grau J) [HC stay judgment].

⁴ *Vickers v Chief Executive of Oranga Tamariki–Ministry for Children* [2025] NZHC 4090 (Grau J).

⁵ *Vickers v Chief Executive of Oranga Tamariki–Ministry for Children* [2026] NZHC 60 (Grau J).

⁶ The Court said the relevant factors on the leave application were accordingly as set out in *Greendrake v District Court of New Zealand* [2020] NZCA 122 at [6].

⁷ CA judgment, above n 2, at [19].

applications” resulting in costs for Oranga Tamariki.⁸ The Court of Appeal awarded costs against the applicant in relation to the applications before it on a band A basis, plus usual disbursements.

[5] The applicant then filed an application for leave to this Court.

[6] The Registrar refused to accept the application for leave to appeal for filing on the basis that s 68(b) of the Senior Courts Act 2016 provides that this Court is not able to hear and determine an appeal against a decision of the Court of Appeal if that decision is, relevantly, a refusal to give leave to appeal to the Court of Appeal.

[7] The applicant, in seeking a review of the Registrar’s decision, says that decision “was correct on the face of the initial paperwork” but, given subsequent events, “a judicial determination is required to recognise that [his] final appeal rights matured within the High Court registry”.

[8] With one qualification, I have concluded that the Registrar’s decision is correct. There is no jurisdiction for this Court to hear an appeal from a refusal to give leave to appeal to the Court of Appeal.⁹ The application for a stay of the High Court costs award fell away with the decision to decline leave to appeal from the costs decision to which that application related. Nor does the fact the Family Court has issued its judgment on the proceeding in that Court trigger a right to a final appeal to this Court as the applicant submits. As the Registrar said, the jurisdiction of this Court is a statutory one.

[9] This Court can treat an application like the present one as if it sought leave to appeal directly from the High Court. However, the circumstances must be exceptional and highly compelling to warrant such a course. Nothing in the applicant’s submissions provides a basis for concluding that the Registrar should have treated his application as an application for a direct appeal. As the High Court made clear, the

⁸ At [27].

⁹ Senior Courts Act 2016, s 68(b).

stay was in force “until the conclusion (and result) of the proceedings in the Family Court”.¹⁰ Hence, the High Court said:¹¹

If there are matters not addressed by the Family Court that remain within the purview of the judicial review application, Mr Vickers can apply to have the stay lifted [in the High Court] and he can recommence the proceeding.

[10] While the notice of application for leave to appeal is not entirely clear in this respect, it does appear that it also extends to the decision of the Court of Appeal to award costs. There is an argument that this part of the application is properly treated as a part of, or sufficiently ancillary to, the refusal of leave such that the bar in s 68(b) applies. The alternative is that it raises an independent question which is not covered by s 68(b). The two possibilities go to jurisdiction and have not been considered as a distinct issue by the Registrar. In the circumstances, it is preferable that the question of which side of the line the application falls be dealt with by a panel rather than by a single Judge. The application for leave to appeal from the decision of the Court of Appeal to award costs may therefore be filed. This is not to suggest that leave is granted. That matter will be determined subsequently, and the applicant will need to persuade the Court both that there is jurisdiction and that the criteria for leave are met.

Result

[11] The application for review of the decision of the Registrar not to accept the application for leave to appeal for filing is allowed in part as set out in [10] above.

¹⁰ HC stay judgment, above n 3, at [40].

¹¹ At [38].