

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC UR 68/2025
[2026] NZSC 29

RE JANINE DAVINA SAX
Applicant

Counsel: Applicant in person

Judgment: 14 April 2026

JUDGMENT OF WILLIAMS J

**The application for review of the decision of the Registrar
not to accept the application for leave to appeal out of
time is dismissed.**

REASONS

[1] The applicant, Janine Sax, sought to file an application for leave to appeal and an application to do so out of time. The Registrar declined to accept them for filing. Ms Sax now applies to review the Registrar's decision.

Factual and procedural background

[2] The applicant and the proposed respondent, Ms Joanne McMillan, are both rabbit breeders. The applicant alleges that Ms McMillan spread false and damaging information about her rabbit breeding operation. She applied to the District Court under the Harassment Act 1997 for orders restraining the respondent from harassing her on social media and elsewhere. Judge Ingram struck the proceeding out under s 32 of the Harassment Act, concluding that it was frivolous and vexatious in accordance with that provision.¹

¹ *Sax v McMillan* [2022] NZDC 4128.

[3] The applicant wished to appeal to the High Court. When her application for waiver of security for costs was refused by Judge Lawson in the District Court,² she sought waiver in the High Court. There, Hinton J refused the application and ordered that the proceeding would be deemed abandoned if security was not paid.³ The applicant then sought leave to appeal Hinton J's decision. The Court of Appeal refused leave on the basis that the proposed appeal raised no arguable question of fact or law and that the respondent was entitled to the protection of security for costs in the usual way.⁴ The applicant then sought to recall that judgment and that application was also declined, as was a separate application for name suppression.⁵ A further application for interim suppression accompanied a second recall application. Cooke J refused to accept those applications for filing in a minute dated 8 August 2025, commenting:⁶

The Court has considered and determined an application for leave to bring an appeal in this Court which has then been declined, and it has subsequently considered and declined both an application for recall of that judgment and for suppression. In those circumstances, the Court now has no jurisdiction in this matter.

[4] The applicant then attempted to file a further omnibus application for recall, this time of the minute of Cooke J together with the prior decisions of the Court of Appeal. This was rejected for filing by a Deputy Registrar. A review application was then made in respect of that decision which the Court of Appeal rejected.⁷

[5] The applicant then attempted to file in this Court an application for leave to appeal all decisions of the Court of Appeal mentioned above. The Registrar declined to accept that application for filing for want of jurisdiction pursuant to r 5A(1)(b)(ii) of the Supreme Court Rules 2004. The applicant applies for review of that decision.

² *Sax v McMillan* DC Tauranga CIV-2021-070-668, 16 June 2023.

³ *Sax v McMillan* [2023] NZHC 1702. The High Court treated the application as both an appeal from Judge Lawson's decision and a fresh application for waiver of security for costs in that Court: at [5]. See also High Court Rules 2016, r 20.13.

⁴ *Sax v McMillan* [2024] NZCA 620 (Courtney and Mallon JJ).

⁵ *Sax v McMillan* [2025] NZCA 376 (Courtney and Mallon JJ).

⁶ *Sax v McMillan* CA675/2023, 8 August 2025 at [4].

⁷ *Sax v McMillan* [2025] NZCA 582 (Mallon J).

Submissions

[6] The applicant advances a number of grounds. It is necessary to mention only the following ones. The applicant argues that s 68(b) of the Senior Courts Act 2016 (excluding jurisdiction in relation to Court of Appeal leave decisions) does not apply to applications to recall such decisions. This Court's leave decisions in *Ngahuia Reihana Whanau Trust v Flight*⁸ and *Payne v Payne*,⁹ and the decision in *Rae v Commissioner of Police*,¹⁰ are said to prohibit relitigation of leave refusals, not recall applications, procedural rulings or registry decisions. Further, it is argued that s 74 of the Senior Courts Act remains relevant despite the exclusion in s 68(b).

Assessment

[7] The application to review the Registrar's decision must be dismissed. This Court does not have jurisdiction to hear appeals against refusal in the Court of Appeal to recall a judgment declining leave to appeal. Contrary to the applicant's submissions, the leave decisions in *Ngahuia Reihana Whanau Trust* and *Payne* both directly addressed that issue and reached this conclusion. While *Rae* acknowledges that s 74(4) of the Senior Courts Act 2016 does not preclude this Court from hearing an appeal against a recall judgment of the Court of Appeal, in that case recall was sought against a substantive decision of the Court.¹¹ This case is different. The applicant cannot use the fact that her application for leave relates to a recall decision to evade the jurisdictional bar in s 68(b) against entertaining appeals from a refusal in the Court of Appeal to grant leave to appeal.

[8] In any event, the underlying application to waive security for costs lacks merit, and I see no substantive basis upon which the Court of Appeal's decision in that regard can properly be challenged.

⁸ *Ngahuia Reihana Whanau Trust v Flight* (2004) 17 PRNZ 357 (SC).

⁹ *Payne v Payne* [2005] NZSC 52.

¹⁰ *Rae v Commissioner of Police* [2023] NZSC 156, [2023] 1 NZLR 579.

¹¹ At [17]–[25].

Decision

[9] Since the Registrar correctly determined that this Court does not have jurisdiction in this matter, the application to review her refusal to accept the applicant's applications is dismissed.