

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 164/2025
[2026] NZSC 43

BETWEEN LYNETTE JOCELYN GIBSON
 Applicant

AND SIMON REDDING MAKGILL
 First Respondent

 ROBERT ERNEST WAIT, WENDY
 THERESE WAIT AND GAYLENE ANNE
 CHRISTIE WAIT
 Second Respondents

Court: Winkelmann CJ, Kós and Miller JJ

Counsel: E Telle for Applicant
 A C Challis and H L Hui for First Respondent
 S Moore and G I Q Credo for Second Respondents

Judgment: 4 May 2026

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant must pay the second respondents one set of costs of \$2,500.**
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REASONS

[1] In March 1976, Lynette Gibson’s father, Lewis Wait, succumbed to cancer. Her brother, Robert Wait, had by then abandoned his university studies to run the family farm, which was owned in two half shares by their parents, Lewis and Nellie. Under Lewis’s will, Nellie received a life interest in his half share. Robert was to receive that share on her death, subject to his paying Lynette and their sister, Gaylene, in equal shares, a sum equal to one-sixth of the value of the estate as at the date of

Lewis's death. Lewis's overriding objective was to make provision for the support and maintenance of Nellie, who was still relatively young.¹ Lewis's will provided for comparatively little to go to the two sisters. Probate was granted in July 1976.

[2] Lewis had also settled the LH Wait Family Trust. The beneficiaries included his children and grandchildren. In 2021, the trust made a capital distribution of \$520,000 to each of Gaylene and Lynette.

[3] Lynette alleges her father promised that Nellie would 'level things up' between the three siblings. However, in 2016, Nellie sold her own half share in the farm to Robert's family trust for \$4.544 million plus GST. Most of the purchase price was forgiven by gift. Lynette says she learned about the transaction in 2021 and realised her father's promise had proved false.

[4] In August 2022, Lynette brought proceedings against the executor of Lewis's estate, Mr Makgill, under the Family Protection Act 1955. The High Court refused to extend time under s 9, finding the approximate 45-year delay was "inexcusable".² The Court of Appeal refused her appeal,³ and she now seeks leave to appeal to this Court.

[5] Lynette essentially seeks to challenge factual findings. There is therefore no question of general or public importance justifying an appeal to this Court.⁴

[6] Nor do we see any appearance of miscarriage.⁵ Lynette proposes to argue the case for breach of moral duty is strong. While the Courts below accepted Lewis arguably breached moral duty,⁶ they also noted that Lynette was content not to initiate proceedings for so long. This was despite Lynette knowing or unreasonably overlooking the fact she was to receive very little under her father's will and, on her case, knowing of the risk her mother would alienate her own half share of the farm or

¹ Nellie died not long after the High Court hearing, which was in October 2023 (at which time she was 99 years old).

² *Gibson v Makgill* [2024] NZHC 781 (Campbell J) [HC judgment] at [26].

³ *Gibson v Makgill* [2025] NZCA 528 (Whata, Downs and Isac JJ) [CA judgment].

⁴ See Senior Courts Act 2016, s 74(2)(a).

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

⁶ HC judgment, above n 2, at [36]–[41]; and CA judgment, above n 3, at [45]–[48].

not follow through with the alleged promise made by Lewis.⁷ Further, Lynette’s claim appeared to be premised more on her mother’s conduct and estate than her father’s,⁸ the Court of Appeal highlighting that “insofar as [Lewis] and Lynette assumed that [Nellie] would level up the distributions, it was an unsound assumption”.⁹

[7] We see no error in these conclusions, and nor therefore in the concurrent findings below that the delay was inexcusable.¹⁰ It is therefore not necessary in the interests of justice to hear or determine the proposed appeal.¹¹

Result

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

[9] The first respondent abides. In these circumstances, the applicant must pay the second respondents one set of costs of \$2,500.

Solicitors:

KooTelle Lawyers, Auckland for Applicant

McElroys, Auckland for First Respondent

The Legal Team, Auckland for Second Respondents

⁷ HC judgment, above n 2, at [29]–[31]; and CA judgment, above n 3, at [25]–[29].

⁸ HC judgment, above n 2, at [40]; and CA judgment, above n 3, at [34] and [49]–[50].

⁹ CA judgment, above n 3, at [50]. We put aside the conclusions below as to prejudice to Robert, which may be more contestable, but ultimately cannot alter the outcome here.

¹⁰ CA judgment, above n 3, at [58].

¹¹ See Senior Courts Act, s 74(1).