IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 22/2026
[2026] NZSC 56

BETWEEN	TERENCE EASTHOPE Applicant
AND	MARION FUSIPALA ALE AS EXECUTOR OF THE ESTATE OF MALU ALE Respondent

Court:	Ellen France, Williams and Kós JJ
Counsel:	Applicant in person G A Ireland for Respondent
Judgment:	8 May 2026

JUDGMENT OF THE COURT

A The applications for leave to appeal and for a stay are dismissed.

B The applicant must pay the respondent costs of $1,000.

REASONS

Introduction

[1] The applicant, Terence Easthope, seeks leave to appeal from a decision of the Court of Appeal in which the Court declined his application for a stay.[1] The stay sought related to a decision of the High Court.[2] The High Court granted summary judgment to the respondent and ordered the applicant to vacate the property in which

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[1] *Easthope v Ale* [2026] NZCA 83 (Courtney, van Bohemen and Andrew JJ) [CA judgment].
[2] *Ale v Easthope* [2025] NZHC 3037 (Associate Judge Gellert) [HC judgment].

he is living in Mount Eden, Auckland (the Mt Eden property).[3] The applicant also seeks a stay in this Court under r 30 of the Supreme Court Rules 2004.

Background

[2] The respondent, Marion Ale, is the executor of her father Malu Ale's estate. Mr Ale died in November 2000. At that time, he was married to but separated from Vailima Easthope. The couple had four children: the respondent, Marion; the applicant, Terence; Joyce; and Leonard.

[3] In Mr Ale's will, he left his estate to be shared equally between Vailima and Joyce. The principal asset was Mr Ale's half-interest in the Mt Eden property. Vailima obtained a life interest in Mr Ale's estate's half-interest in the Mt Eden property after a successful claim under the Family Protection Act 1955 (FPA). She lived in the property until her death in August 2021.

[4] In Vailima's will, her estate was to be divided equally between the respondent, Marion; Leonard; and the applicant, Terence.

[5] After their mother died, the respondent as executor of Mr Ale's estate, and Leonard as executor of Vailima's estate, entered a Deed of Family Arrangement. Under this deed, the Mt Eden property was to be sold to allow the net proceeds of sale (after payment of debts) to be distributed with one-half paid to Vailima's estate. The one-half share would then be distributed in accordance with her will, with, the High Court said, one-half of Mr Ale's estate to go to Joyce.

[6] The respondent then arranged for the applicant to be served with a notice to vacate the property so it could be sold with vacant possession. The applicant had refused to vacate the property. He has lived there, initially with his mother until her death, since about 2001 or 2002. When he refused to leave the property, the respondent sought summary judgment for vacant possession.

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[3] Venning J in the High Court subsequently declined to grant a stay: *Ale v Easthope* [2026] NZHC 148.

[7] As stated, the High Court granted summary judgment and vacant possession. The applicant has appealed against that decision to the Court of Appeal. The applicant also has FPA proceedings in relation to his mother's estate which are on foot in the High Court.[4] Finally, he says that the Family Court has accepted for filing his FPA claim in relation to Mr Ale's estate, which has been made out of time.

The Court of Appeal

[8] In declining a stay, the Court of Appeal said the applicant's "strongest argument" was that, without a stay, his appeal right will be rendered nugatory.[5] That was because the property would be sold if the order for vacant possession is enforced. But, the Court said, the applicant:[6]

> [8] … has no claim to full ownership of the property and there is no suggestion he is either willing or able to buy out the interests of the other beneficiaries. Realistically, there is no outcome in which the property would not be sold.
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> [9] As Venning J observed, Terence's principal claim is not against the property itself but against his mother's estate. The estate's interest in the property is limited to a one-half share in the value of the property. Terence's potential claim has been recognised by the trustees of both estates who have proposed that on sale of the property, 50 per cent of the net proceeds will be maintained on trust pending resolution of Terence's claim. Terence's interest in the property can be addressed in that way.

[9] The Court also took the view that the effect on third parties, particularly the other beneficiaries, was important. The applicant's actions meant the estates were incurring costs, reducing the net benefit to the other beneficiaries. The Court was:[7]

> … satisfied that the overall balance of convenience is against Terence. Given the number of beneficiaries in the estates and the terms of the current wills, there is no realistic prospect of Terence achieving a better outcome than the executors' current undertaking to hold one-half of the net proceeds of the sale of the property on trust pending resolution of his claim against the estate.

[10] In agreement with the High Court, the Court of Appeal considered the prospects of success on appeal were low. It was not realistic to consider the applicant would increase his share of the property to more than 50 per cent. This is the amount

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4 The applicant says this proceeding is progressing toward trial in the High Court.
5 CA judgment, above n 1, at [8].
6 Footnote omitted.
7 At [13].

the executors have undertaken to hold on trust pending resolution of the applicant's claim.[8]

The proposed appeal

[11] The applicant says that, as the High Court accepted, without a stay his appeal against the summary judgment decision will be rendered nugatory. A stay should accordingly have been granted. The applicant submits that the Court of Appeal erred in nonetheless declining a stay, on the basis that the applicant — even if successful on appeal — would not obtain possession of the property. The applicant also argues that this effectively and impermissibly pre-determined the substantive appeal, as well as the practical outcome of the High Court FPA proceedings. The applicant's case is that these issues raise questions of general or public importance and that there will be a miscarriage of justice if the matter is not heard in this Court.[9]

Our assessment

[12] The Court of Appeal has applied settled principles to the application for a stay. No question of general or public importance arises. Nor do we consider there is an appearance of a miscarriage of justice as that term is used in the civil context.[10] Nothing raised by the applicant calls into question the assessment of the Court of Appeal as to where the overall balance of convenience lies. While the applicant's appeal rights obviously weigh heavily in the balance,[11] there are other interests at stake as well. The Court could also give some weight to the undertaking which has been given by the executors with a view to providing some protection for the applicant's interests. In these circumstances, it is not necessary in the interests of justice for the Court to hear the proposed appeal.[12] The application for a stay in this Court accordingly falls away.

[13] We consider a reduced costs order is appropriate in this case.

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8 We understand the applicant has sought a recall of the Court of Appeal judgment.

9 Senior Courts Act 2016, s 74(2)(a)–(b).

10 *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

11 The respondent notes that the applicant has sought a review of the decision of the Registrar not to waive security for costs on the appeal to the Court of Appeal.

12 Senior Courts Act, s 74(4).

Result

[14] The applications for leave to appeal and for a stay are dismissed.

[15] The applicant must pay the respondent costs of $1,000.

Solicitors:
McVeagh Fleming, Auckland for Respondent