

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 30/2026
[2026] NZSC 60

BETWEEN
GILLIAN JANE GATFIELD
First Applicant
EMMA JACQUELINE PEARSON
Second Applicant
AND
ANNE ELIZABETH HINTON AS
EXECUTOR AND TRUSTEE OF THE
ESTATES OF JACQUELINE MARY
GATFIELD AND KENNETH MILES
GATFIELD
Respondent

Court: Ellen France, Williams and Kós JJ
Counsel: M K Mahuika and M A Jeffries for Applicants
A S Butler KC for Respondent
A H Waalkens KC for Interested Parties
Judgment: 22 May 2026

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicants must pay the respondent and the interested parties one set of costs of \$2,500.**
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REASONS

Introduction

[1] This application for leave arises in the context of a dispute over a family trust. In March 2024, the respondent made an application for orders that proceedings brought by the applicants in relation to the trust be referred to mediation and, if

mediation was unsuccessful (as it has been), that the matter be determined by arbitration. Orders as sought by the respondent were made by Associate Judge Lester under s 145 of the Trusts Act 2019.¹ The Court of Appeal upheld those orders on appeal.² The applicants now seek leave to appeal to this Court from the decision of the Court of Appeal and a stay of the judgments below pending an appeal.

Background

[2] Kenneth (Ken) and Jacqueline (Jacqui) Gatfield had five children — Gillian, one of the two applicants for leave; Anne, the respondent; Judith; Robin;³ and Kay.⁴ The second applicant, Emma Pearson, is the only child of Kay who died in 2020. The dispute relates to the disposition of the family bach which Ken and Jacqui built.

[3] Ken died in 2012, having survived his wife. The respondent is the sole trustee of Ken's estate. The right to use the bach is represented by one share in a company. Ken's estate was left equally to his daughters with Kay's share passing to Emma. The respondent sold the share to Judith and Robin in 2022 and they paid the purchase price. The sale to Judith and Robin means that the share no longer forms part of Ken's estate. The applicants say that, going as far back as 2013, the respondent promised to transfer her interest in the share to them. The applicants also submit that they paid the outgoings in respect of the bach for many years as if they were its owners. They brought proceedings in December 2023 against the respondent.

[4] As we have noted, the application for referral to alternative dispute resolution (ADR) processes was made under s 145 of the Trusts Act. That section provides as follows:

145 Power of court to order ADR process for internal matter

- (1) The court may, at the request of a trustee or a beneficiary or on its own motion,—

¹ *Gatfield v Hinton* [2024] NZHC 1712, (2024) 6 NZTR ¶34-018.

² *Gatfield v Hinton* [2026] NZCA 17, (2026) 6 NZTR ¶36-001 (Cooke, Harland and Cull JJ).

³ Judith and Robin are interested parties.

⁴ We largely follow the approach of the Courts below in using first names.

- (a) enforce any provision in the terms of a trust that requires a matter to be subject to an ADR process; or
 - (b) otherwise submit any matter to an ADR process (except if the terms of the trust indicate a contrary intention).
- (2) In exercising the power, the court may make any of the following orders:
- (a) an order requiring each party to the matter, or specified parties, to participate in the ADR process in person or by a representative:
 - (b) an order that the costs of the ADR process, or a specified portion of those costs, be paid out of the trust property:
 - (c) an order appointing a particular person to act as a mediator, an arbitrator, or any other facilitator of the ADR process.
- (3) This section applies in relation to internal matters only.

[5] Internal matters are defined under s 142 of the Act as "... a matter to which the parties are a trustee and 1 or more beneficiaries, or a trustee and 1 or more other trustees, of the trust". "Matter" is defined in s 142(a)(i) of the Act as "a legal proceeding brought by or against a trustee in relation to the trust". Matters do not include "a legal proceeding or a dispute about the *validity* of all or part of a trust".⁵

[6] In dismissing the appeal, the Court of Appeal treated the decision under s 145 as an evaluative one and so re-evaluated the decision made in the High Court. The Court of Appeal found first that the orders made were within the jurisdiction of an Associate Judge to make. This point does not appear to be pursued now. Second, the Court determined that this involved "internal matters" which may be referred to arbitration under s 145 and not matters which are excluded by the Act. Third, the Court said that s 145 authorised compulsory arbitration in the absence of the parties' agreement to that course. Finally, the Court considered that the orders made were appropriate here.

⁵ Section 142(b) (emphasis added).

The proposed appeal

[7] The applicants argue that s 145 does not confer the power to make coercive arbitration orders in a trust proceeding. They say that if construed in light of various constitutional rights, common law principles, and in the context of the Trusts Act and the Arbitration Act 1996, an arbitration agreement is a prerequisite to the exercise of the s 145 power. They say there is nothing in the legislative history to support the interpretation taken in the courts below. They also wish to argue that the reasons given for exercising the power here, if there is a power to do so, are insufficient and misapply the respondent's judicial status.

[8] We accept that the scope of s 145 and its application may raise questions of general or public importance.⁶ However, the present case has insufficient prospects of success. Essentially, nothing raised by the applicants suggests the Court of Appeal erred in its assessment, which followed an analysis of the statutory scheme. In those circumstances, nor is there an appearance of a miscarriage of justice as that term is used in the civil context.⁷

[9] In addition to the permissive wording of s 145(1)(b) the Court of Appeal referred, for example, to the fact that the power of the court in s 145 is limited if the terms of the trust "indicate a contrary intention". The Court saw that as contemplating trust terms reflecting an intention to exclude the relevant ADR processes. The Court of Appeal also referred to provisions that deal with the required mechanics of an arbitration where there has been no prior agreement.⁸ The Court accepted that the absence of agreement would be a factor when the court considers whether to make an order under s 145. The Court also noted the requirements to be satisfied before an order could be made and the fact that there is a right of appeal to the High Court from a decision of the arbitrator on questions of law under cl 5 of sch 2 of the Arbitration Act.

⁶ Senior Courts Act 2016, s 74(2)(a).

⁷ Section 74(2)(b); and *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

⁸ Citing the Trusts Act 2019, s 148.

Result

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

[11] The applicants must pay the respondent and the interested parties one set of costs of \$2,500.

Solicitors:

M A Jeffries, Auckland for Applicants

Simpson Grierson, Auckland for Respondent and Interested Parties