

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC UR 7/2026
[2026] NZSC 9

RE DAYA NAND
Applicant

Counsel: Applicant in person

Judgment: 23 February 2026

JUDGMENT OF ELLEN FRANCE J

The application for review of the decision of the Deputy Registrar declining to accept two applications for leave to appeal for filing is dismissed.

REASONS

Introduction

[1] The applicant, Daya Nand, sought to file two applications for leave to appeal in this Court. Both applications relate to the decision of the Court of Appeal in *Nand v Idea Services Ltd*.¹ In that decision, the Court of Appeal declined the applicant's application for leave to appeal under s 214 of the Employment Relations Act 2000 (ERA) from a decision of the Employment Court.² The Employment Court struck out the applicant's application for leave to challenge out of time a determination of the Employment Relations Authority (the Authority).³

¹ *Nand v Idea Services Ltd* [2025] NZCA 674 (Katz and Collins JJ) [CA judgment].

² *Nand v Idea Services Ltd* [2025] NZEmpC 81 (Judge King) [EmpC judgment].

³ *Nand v Idea Services Ltd* [2018] NZERA Auckland 157 (James Crichton) [second Authority decision].

[2] The first of the applications for leave to appeal to this Court sought leave to bring a criminal appeal and the second sought leave to bring a civil appeal.

[3] The Deputy Registrar, in a letter of 22 January 2026, declined to accept both applications for filing, essentially on the basis there was no jurisdiction for the Court to consider either of them.

Background

[4] The background to both applications is set out in some detail in the decision of the Court of Appeal.⁴ I need only note the applicant was an employee of Idea Services Ltd. In 2013, Idea Services investigated a complaint the applicant had assaulted a client.⁵ It considered this to be misconduct requiring Mr Nand's dismissal. The parties entered into a settlement arrangement as part of which the applicant resigned. He subsequently raised a personal grievance alleging constructive dismissal. The Authority found part of the applicant's claim was out of time.⁶ On the part of the claim that was in time, the Authority concluded it could not be proved on the balance of probabilities.⁷

[5] The applicant then applied to the Employment Court, out of time, for leave to challenge the Authority's determination. A notice of discontinuance was filed by the applicant's representative after the parties reached a settlement agreement.

[6] The applicant subsequently sought a rehearing of his original application for leave to file a challenge to the Authority's determination. He said his representative misled him into signing the settlement agreement. Idea Services succeeded in their application to strike out this application, for a variety of reasons.⁸

[7] In determining that leave to appeal under s 214 of the ERA should not be granted, the Court of Appeal concluded the proposed appeal did not raise a question

⁴ CA judgment, above n 1, at [3]–[13].

⁵ The applicant says he was acquitted of the charge of assault on 29 October 2014.

⁶ *Nand v Idea Services Ltd* [2018] NZERA Auckland 109 (James Crichton) at [17]–[19].

⁷ Second Authority decision, above n 3, at [25] and [12]–[23].

⁸ EmpC judgment, above n 2, at [9]–[13].

of law.⁹ Even if there was a question of law, none of the proposed grounds were of “general or public importance”.¹⁰

The review application

[8] In support of the application for review, the applicant says, amongst other matters, that he has a case which should be fully investigated or an injustice will result.

[9] In rejecting the application for leave to bring a criminal appeal for filing, the Deputy Registrar said that the application in the Court of Appeal under s 214 of the ERA was not a criminal proceeding for the purposes of the Supreme Court Rules 2004. There was accordingly no jurisdiction for the Court to consider a criminal leave application.

[10] As to the application for leave to bring a civil appeal, that was not accepted for filing because the proposed appeal was excluded from the Court’s jurisdiction by s 68(b) of the Senior Courts Act 2016. Section 68 provides as follows:

68 Appeals against decisions of Court of Appeal in civil proceedings

The Supreme Court may hear and determine an appeal by a party to a civil proceeding in the Court of Appeal against a decision made in the proceeding, unless—

- (i) an enactment other than this Act makes provision to the effect that there is no right of appeal against the decision; or
- (ii) the decision is a refusal to give leave or special leave to appeal to the Court of Appeal.

[11] Nothing raised by the applicant calls into question the decisions of the Deputy Registrar about the jurisdiction of the Court. The Deputy Registrar is plainly right that the application under s 214 is not a criminal proceeding and the civil application relates to a decision to refuse to give leave to appeal in terms of s 68(b).¹¹ It may be the latter application could be treated as if it sought leave to appeal direct

⁹ CA judgment, above n 1, at [18].

¹⁰ At [19]; and see Employment Relations Act 2000, s 214(3).

¹¹ See *Cook v Housing New Zealand Corp* [2018] NZSC 42 at [6]; *Basnyat v New Zealand Police* [2019] NZSC 21 at [2]; and *Re Hook* [2025] NZSC 184 at [4].

from the Employment Court.¹² The circumstances must be exceptional to justify a so-called “leapfrog” appeal.¹³ However, the civil application in this case was not formulated as an application for a direct appeal and there was nothing in it to suggest the Deputy Registrar should have treated it as such.¹⁴

Result

[12] The application for review of the decision of the Deputy Registrar declining to accept the applications for leave to appeal for filing is dismissed.

¹² See Senior Courts Act 2016, ss 70 and 75; and Employment Relations Act, s 214A. Under s 214A any such appeal would be restricted to questions of law.

¹³ Senior Courts Act, s 75(b); and *Burke v Western Bay of Plenty District Council* [2005] NZSC 46, (2005) 18 PRNZ 560 at [4]. See also *Head v Chief Executive of the Inland Revenue Department* [2022] NZSC 15 at [3] in which the Court, referring to *White v Auckland District Health Board* [2007] NZSC 64, (2007) 18 PRNZ 698 at [5], noted this Court’s reluctance to permit an appeal direct from the Employment Court where the Court of Appeal had declined leave.

¹⁴ See *Re Hook*, above n 11.