

**NOTE: PURSUANT TO S 80 OF THE PROTECTION OF PERSONAL AND
PROPERTY RIGHTS ACT 1988, ANY REPORT OF THIS PROCEEDING
MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURT ACT 1980.
FOR FURTHER INFORMATION, PLEASE SEE**

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IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 22/2019
[2019] NZSC 25**

BETWEEN AN (SC 22/2019)
Applicant

AND PRIME MINISTER
Respondent

Court: William Young, O'Regan and Ellen France JJ

Counsel: DN (on behalf of Applicant)

Judgment: 11 March 2019

JUDGMENT OF THE COURT

- A The application for an extension of time to file an application for leave to appeal is dismissed.**
- B There is no order for costs.**
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REASONS

[1] The applicant applies for leave to appeal against a decision of Moore J in a minute of 4 December 2018. In that minute, Moore J directed that an application that the applicant's husband, whom we will call DN, attempted to file on the applicant's behalf at the High Court, Auckland Registry, should be rejected and returned to DN.

[2] The application for leave to appeal to this Court was filed on 27 February 2019, which means it was filed outside the 20 working day period within which an application for leave must be made.¹ We will treat the application for leave as if it contained an application for an extension of time.

[3] The background to the minute of Moore J is as follows. DN has made repeated applications for a writ of habeas corpus on behalf of the applicant, who suffers from dementia, and who is in care in a rest home under orders made by the Family Court under the Protection of Personal and Property Rights Act 1988.² In September 2017 the Chief High Court Judge, Venning J, directed that any further such applications should not be accepted for filing.

[4] When DN attempted to file such an application in December 2017, Hinton J issued a minute to the effect that the application should not have been accepted for filing, given the direction that had been given by Venning J. The applicant, through DN, sought leave to appeal directly to this Court against Hinton J's minute. That application was dismissed.³

[5] In his minute, Moore J referred to the direction made by Venning J and to the minute of Hinton J. The present application for leave meets the same obstacles as the application in *AN (SC 12/2018) v Bupa Care Services NZ Ltd* that was dismissed by this Court in March 2018. The test for leave is clearly not met,⁴ let alone the "exceptional circumstances" test for direct appeals from the High Court to the Supreme Court.⁵ The application for leave to appeal would, therefore, if an extension of time were granted, inevitably be dismissed.

[6] The party named as respondent to the present application is the Prime Minister. This is clearly wrong. An application for habeas corpus can be made only against the party detaining the person who is subject to the application. DN knows this from his

¹ Supreme Court Rules 2004, r 11.

² In *AN v Manukau District Court* [2017] NZHC 2190, van Bohemen J set out a summary of the various applications made by the applicant between September 2015 and July 2016: at [20]–[41].

³ *AN (SC 12/2018) v Bupa Care Services NZ Ltd* [2018] NZSC 20.

⁴ Senior Courts Act 2016, s 74.

⁵ Section 75.

many previous applications and his naming of the Prime Minister as respondent is abusing the Court's process.

[7] DN's conduct in attempting to file habeas corpus applications in defiance of Venning J's direction, then seeking leave to appeal to this Court against directions made by High Court Judges directing that the application not be accepted, is abusing the processes of the High Court and this Court. We direct the Registrar not to accept for filing any future application for leave of this nature without the prior approval of a judge.

[8] As no reason has been given for the delay in filing the application and the application itself is meritless, we refuse to grant an extension of time to file the application for leave to appeal.

[9] We did not call upon the named respondent to make submissions and therefore make no order for costs.