

IN THE SUPREME COURT OF NEW ZEALAND

**SC 47/2005
[2005] NZSC 60**

NEIL MARTIN CLARKE

v

THE QUEEN

Court: Elias CJ and Tipping J

Counsel: Appellant in person

Judgment: 29 August 2005

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The appellant, Mr Clarke, was convicted in the District Court on one charge of trespass. His general appeal to the High Court was dismissed. He sought leave from the High Court to appeal to the Court of Appeal. That application was dismissed.

[2] He then brought an application to the Court of Appeal for special leave to appeal. That application was also dismissed. There is no right of appeal to this Court from the Court of Appeal's decision refusing leave.¹

[3] Mr Clarke has accordingly sought leave to appeal to this Court, not from the Court of Appeal's decision, but directly from the decision of the High Court dismissing his general appeal. Although there is no statutory bar against the bringing of a direct appeal in these circumstances, the Court has already held² that, unless there are truly compelling circumstances, direct appeals should not be permitted when their effect would be to circumvent the inability of an appellant to appeal from the order of the Court of Appeal refusing special leave.

[4] In addition, of course, exceptional circumstances must be established to justify an appeal direct from the High Court to this Court.³

[5] The present application fails on both counts. There is nothing sufficiently exceptional or compelling in this case to justify the points at issue being considered by this Court. In that respect we adopt the reasons given by the Court of Appeal when it declined, as long ago as 20 September 2004, to grant Mr Clarke special leave to appeal to that Court. Furthermore, the case does not satisfy the general criteria for the granting of leave to appeal to this Court. It is not necessary in the interests of justice for this Court to hear the proposed appeal. The case does not involve a matter of general or public importance, nor do we consider a substantial miscarriage of justice may have occurred or may occur unless the appeal is heard.⁴

[6] It is for these reasons that the application is dismissed.

¹ *Simpson v Kawarau District Council* SC CRI 13/2004; (2004) 17 PRNZ 358.

² *Young v Land Transport Safety Authority* [2005] NZSC 51; *Burke v The Western Bay of Plenty District Council* [2005] NZSC 46.

³ Section 14 of the Supreme Court Act 2003.

⁴ Section 13(2) of the Supreme Court Act 2003.