

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 47/2019
[2019] NZSC 66

BETWEEN DWAYNE RUSSELL WARAKIHI MAAKA
 SMYTH-DAVOREN
 Applicant

AND DAVID PARKER
 First Respondent

 JACINDA ARDERN
 Second Respondent

 ANDREW LITTLE
 Third Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: Applicant in person
 V McCall for Respondents

Judgment: 1 July 2019

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B No order as to costs.

REASONS

[1] Mr Smyth-Davoren seeks leave to appeal to this Court from a decision of the Court of Appeal declining to grant him an extension of time necessary to enable his appeal to that Court to proceed.¹ Mr Smyth-Davoren points to a succession issue and to other matters not directly related to his proceeding. The appeal to the Court of

¹ *Smyth-Davoren v Parker* [2019] NZCA 139 (Brown and Gilbert JJ).

Appeal related to the minute issued by Katz J striking out Mr Smyth-Davoren's proceeding in the High Court on the basis that Court had no jurisdiction to hear that proceeding.²

[2] Katz J said it was not easy to work out the intended cause(s) of action Mr Smyth-Davoren wanted to pursue. However, the Judge said, the proceeding appeared to relate to "the ownership of Maori land, and associated entitlements".³ Those were matters to be dealt with first in the Maori Land Court.⁴ On this basis, the proceeding had to be filed first in that Court.

[3] Mr Smyth-Davoren appealed to the Court of Appeal from the decision of Katz J but he did not file the documents or take the steps required by the Court of Appeal (Civil) Rules 2005 to keep his appeal live. The appeal was treated as abandoned on 28 November 2018. Mr Smyth-Davoren applied for an extension of time so the appeal could continue. In declining to grant an extension of time, the Court of Appeal said Katz J was right that the proceeding had to be filed in the Maori Land Court and treated the claim and appeal as "hopeless".⁵

[4] It is not clear from Mr Smyth-Davoren's submissions on what basis he says this Court should grant him leave to appeal. As counsel for the respondents submit, it appears to be suggested this Court deal with what is, in essence, a succession application.⁶

[5] In reaching its decision, the Court of Appeal has applied the principles set out by this Court in relation to applications for an extension of time.⁷ No question of general or public importance accordingly arises.⁸ Nor is there an appearance of a miscarriage of justice arising if leave is not granted.⁹ The criteria that must be satisfied for a grant of leave are not met.

² *Smyth-Davoren v Parker* HC Hamilton CIV-2018-419-238, 21 August 2018.

³ At [4].

⁴ Te Ture Whenua Maori Act 1993, s 18.

⁵ *Smyth-Davoren v Parker*, above n 1, at [8].

⁶ His further submissions filed after the respondents' submissions were received appear to confirm this.

⁷ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [35]–[40].

⁸ Senior Courts Act 2016, s 74(2)(a).

⁹ Section 74(2)(b). See *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [4]–[5].

[6] The application for leave to appeal is therefore dismissed. In the circumstances, we make no order for costs.

Solicitors:
Crown Law Office, Wellington for Respondents