

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 46/2019
[2019] NZSC 76**

BETWEEN DWAYNE RUSSELL WARAKIHI MAAKA
 SMYTH-DAVOREN
 Applicant

AND BRIDGET SUTHERLAND
 Respondent

Court: Glazebrook, O'Regan and Williams JJ

Counsel: Applicant in person
 V McCall for Respondent

Judgment: 19 July 2019

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B No award of costs is made.

REASONS

[1] The applicant filed a proceeding in the High Court, naming the respondent as the intended defendant. The Registrar of the High Court believed that the proceeding was plainly an abuse of the process of the Court and, as provided for in r 5.35A of the High Court Rules 2016, referred the proceeding to a judge for consideration under r 5.35B. The Judge to whom the proceeding was referred, Hinton J, was satisfied that the proceeding was plainly an abuse of the process of the Court and made an order under r 5.35B(2)(a) striking out the proceeding.¹ The Judge noted that a number of

¹ *Smyth-Davoren v Sutherland* HC Hamilton CIV-2018-419-000360, 5 December 2018.

previous claims by the applicant, similarly filed in the High Court, had been stayed or struck out.²

[2] The applicant then filed in the Court of Appeal a notice of appeal against the decision of Hinton J to strike out the High Court proceeding. Security for costs was set at \$6,600. The applicant applied for an order dispensing with security, but this was declined by the Deputy Registrar of the Court of Appeal in a letter dated 26 February 2019. The applicant then sought a review of that decision by a Judge of the Court of Appeal. That review was undertaken by Brown J. He dismissed the application for review.³

[3] The applicant now seeks leave to appeal to this Court against the decision of Brown J.⁴

[4] The application for leave to appeal does not meet the criteria for the grant of leave set out in s 74 of the Senior Courts Act 2016. No matter of general or public importance or of general commercial significance arises.⁵ That is because this Court has already determined the correct approach to applications of this kind in *Reekie v Attorney-General*.⁶ Brown J applied that decision in an orthodox manner in considering the applicant's application for review of the Deputy Registrar's decision. Nor is there any basis for concern that a substantial miscarriage of justice may have occurred or may occur unless the proposed appeal to this Court is heard.⁷

² At [13]. Hinton J referred to a number of minutes including *Smyth-Davoren v Mountbatten (born Windsor)* HC Hamilton CIV-2018-419-174, 25 June 2018; and *Smyth-Davoren v Parker* HC Hamilton CIV-2018-419-238, 21 August 2018. See also *Smyth-Davoren v Parker* [2018] NZHC 3034; and *Smyth-Davoren v Parker* [2018] NZHC 3135.

³ *Smyth-Davoren v Sutherland* [2019] NZCA 93.

⁴ The applicant filed three applications for leave to appeal to this Court on the same day. The other two have been dismissed: *Smyth-Davoren v Parker* [2019] NZSC 66; and *Smyth-Davoren v Mountbatten* [2019] NZSC 67. An application for review of those judgments was declined: *Smyth-Davoren v Parker* [2019] NZSC 70.

⁵ Senior Courts Act 2016, s 74(2)(a) and (c).

⁶ *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737.

⁷ Senior Courts Act 2016, s 74(2)(b); and *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [4]–[5].

[5] The application for leave to appeal is therefore dismissed.

[6] We make no award of costs.

Solicitors:
Crown Law Office, Wellington for Respondent