

IN THE SUPREME COURT OF NEW ZEALAND

SC 104/2016
[2016] NZSC 155

BETWEEN FRIEDRICH JOACHIM FEHLING
 Applicant

AND WEST COAST DISTRICT HEALTH
 BOARD
 Respondent

Court: Arnold, O'Regan and Ellen France JJ

Counsel: Applicant in Person
 P N White for Respondent

Judgment: 24 November 2016

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant is to pay the respondent costs of \$1,500.**
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REASONS

[1] The applicant was dissatisfied with a decision of the Human Rights Review Tribunal.¹ He wished to appeal against that decision and filed documents in the High Court in pursuit of that objective. The documents were returned to him by the High Court after Mander J directed the registry not to accept them for filing. This is because they contained scandalous and offensive material.

[2] The applicant seeks leave to appeal against the decision not to accept his documents for filing.

[3] We do not consider the Court has jurisdiction to hear an appeal against a decision not to accept documents for filing, because their non-acceptance meant

¹ *Fehling v Ministry of Health* [2016] NZHRRT 29.

there was no “proceeding” in the High Court.² Mander J’s direction that the documents not be accepted for filing did not prevent the applicant from appealing to the High Court, but required him to do so in a manner that did not abuse the Court’s process. The correct response to this by the applicant was to file appeal documents in the High Court that omitted the scandalous and offensive material, not to apply for leave to appeal to this Court.

[4] Even if this Court had jurisdiction to consider the application, it is clear that there is no proper basis for granting leave in this case. Under s 14 of the Supreme Court Act 2003, the Court may grant leave against the decision of a court other than the Court of Appeal only if there are exceptional circumstances justifying taking the appeal directly to this Court. That requirement applies in addition to the requirements for leave under s 13, which refers to appeals involving “a matter of general or public importance”, or where a substantial miscarriage of justice may have occurred.

[5] The decision of Mander J to direct the non-acceptance of the scandalous material was a decision to protect the processes of the Court from being abused. No matter of public importance arises and there are certainly not exceptional circumstances.

[6] We dismiss the application for leave to appeal.

[7] The respondent was required to file a brief submission for which it will have no doubt incurred some cost. In the circumstances, we award costs to the respondent of \$1,500.

[8] The material filed in this Court contained scandalous and offensive statements. The applicant is directed to desist from filing such material in this Court. Material of this kind in the future will not be accepted for filing and will be returned to the applicant.

Solicitors:
West Coast District Health Board, Christchurch for Respondent

² Supreme Court Act 2003, s 8.