

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

[2019] NZSC 19

BETWEEN JANE CHAPMAN SIEMER
Applicant

AND DISTRICT COURT AT NORTH SHORE
First Respondent

DISPUTES TRIBUNAL AT NORTH
SHORE
Second Respondent

Counsel: Applicant in person

Judgment: 28 February 2019

JUDGMENT OF ELLEN FRANCE J

The application for review of the Registrar's decision declining to waive the payment of filing fee is dismissed.

REASONS

[1] The applicant has applied for a review of the decision of the Registrar to refuse to waive the filing fee in respect of an application for leave to appeal to this Court.¹

Background

[2] The application for leave to appeal relates to a decision of Miller J to decline to review the decision of the Deputy Registrar of the Court of Appeal not to waive payment of the filing fee.² The filing fee is payable in relation to the applicant's notice of appeal filed in the Court of Appeal. Miller J said that attached to the notice were

¹ Supreme Court Act 2003, s 40; Senior Courts Act 2016, s 160. The review is conducted by way of rehearing: Supreme Court Act, s 40(4)(a); Senior Courts Act, s 160(4)(a).

² *Siemer v District Court North Shore* [2018] NZCA 558 [CA judgment].

two minutes of Fitzgerald J.³ In those minutes the Judge was dealing with issues relating to a transcript of a hearing in the Disputes Tribunal. Fitzgerald J had made disclosure of the transcript to the applicant conditional on it not being disclosed to any other party. As Miller J notes, “it appears that Mrs Siemer did not comply with that condition”.⁴

[3] Miller J noted that the applicant sought waiver of the filing fee on the basis her appeal raised matters of genuine public interest. The argument appears to have been that the High Court had imposed a “blanket suppression order” contrary to the applicant’s rights, was wrong to decide contempt could occur on the basis of use of a court transcript and gave insufficient reasons for the decision.

[4] Miller J agreed with the Deputy Registrar that the appeal did not raise matters of genuine public interest describing the arguments about contempt as “misconceived”.⁵ The Judge considered the finding of contempt was particular to the facts and no broader questions arose. Miller J also noted:

[6] For completeness, it does not appear that the Judge imposed any penalty on Mrs Siemer for the contempt she was found to have committed. In circumstances where a judge makes a finding of contempt and imposes such a penalty, there may be a need to ensure that a filing fee does not prevent an appellant from having an opportunity to contest a finding that imposes a quasi-criminal penalty on them. However, in this case Mrs Siemer has not indicated any impecuniosity, and indeed has indicated an intention to apply for leave to appeal to the Supreme Court if her review is unsuccessful. Accordingly, I express no final view on the point.

The application for review

[5] Three grounds are raised in support of the application for review of the Registrar’s decision. The first two grounds are inter-related and rely on the proposition no filing fee is payable because contempt arising out of suppression orders must be treated as a criminal appeal. In addition, the applicant submits the Registrar’s decision is not a considered one. That is because the applicant says the letter of 18 December 2018 is a standardised form letter.

³ *Siemer v District Court at North Shore* HC Auckland CIV-2018-404-610, 13 September 2018; and *Siemer v District Court at North Shore* HC Auckland CIV-2018-404-610, 7 August 2018.

⁴ CA judgment, above n 2, at [2].

⁵ At [6].

[6] In declining to waive the fee, the Registrar considered the proceeding did not concern a matter of genuine public interest. The Registrar noted, first, that the approach taken by Miller J was “straightforward”. The Registrar took the view the substantive appeal before the Court of Appeal was not relevant to his decision on the fee waiver application. Even if it were, the Registrar took into account Miller J’s view the proceedings in relation to contempt were misconceived.

[7] The application for review is to be evaluated in terms of reg 5(2) of the Supreme Court Fees Regulations 2003. Relevantly, the Regulations provide that the Registrar may waive the fee “if satisfied” that the appeal “concerns a matter of genuine public interest”⁶ and “is unlikely to be commenced or continued unless the fee is waived”.⁷

[8] Having considered the submissions and other material filed in the Court by the applicant, I agree with the Registrar’s assessment. There is no challenge to the principles applied by Miller J in dismissing the application for review in the Court of Appeal. No general question arises. Whether the underlying appeal to the Court of Appeal is properly characterised as criminal rather than civil may give rise to a matter of public interest. However, in the present circumstances, where the matter is minor and there was no penalty, no matter of genuine public interest is raised. Finally, nothing turns on the choice of language adopted by the Registrar when, on the face of the document, the issues raised have been addressed.

[9] In these circumstances I consider the decision of the Registrar not to waive the filing fee was correct and I dismiss the application for review.

Solicitors:
Crown Law Office, Wellington for Respondents

⁶ Regulation 5(2)(b)(i).

⁷ Regulation 5(2)(b)(ii).