

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC UR 3/2019
[2019] NZSC 54

BETWEEN JANE DINSDALE SIEMER
Applicant

AND DISTRICT COURT AT NORTH SHORE
First Respondent

DISPUTES TRIBUNAL AT NORTH
SHORE
Second Respondent

JUDE HICKSON
Third Respondent

Judgment: 23 May 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 relates to a decision of Downs J declining to grant leave to the applicant to continue her claim for judicial review.² Leave was required because, in an earlier judgment dismissing an application for judicial review, a civil

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

² *Siemer v District Court, North Shore* [2019] NZHC 346 [*Siemer* (HC)].

restraint order had been made by Hinton J against the applicant under s 166 of the Senior Courts Act 2016.³ The civil restraint order prohibited the applicant “from commencing or continuing, without leave, any proceeding in any Court ... concerning or relating to *Siemer v Hickson* CIV-2017-044-495 and CIV-2017-044-562, including ... proceedings relating to the conduct of any judicial officer of the Disputes Tribunal, for three years”.⁴

[3] Downs J considered the claim before him was encompassed by the order and dealt with the application for leave to continue it. In brief, the application was declined on the basis it was “brought to harass, and is almost certainly [the applicant’s husband’s claim]”.⁵ Downs J noted a number of matters supporting the view the claim was brought to harass including, first, that the claim was “much like” the earlier claim which had been dismissed by Hinton J.⁶ Second, the Judge relied on the way in which the claim had been handled as “being consistent with an intention to harass”.⁷ Third, Downs J considered it “all but certain” the applicant’s husband, who had been declared a vexatious litigant, was behind the claim, “so the claim actually [is] his”.⁸ The Judge also took the view the claim was not arguable.⁹

[4] After the application for leave to appeal from the decision of Downs J was received by this Court, the Registrar declined to accept it. The Registrar advised the applicant that under s 169(6) of the Senior Courts Act, the decision on an application for leave to continue a proceeding was final and s 69(a) of the Senior Courts Act precluded the Court from considering the application.¹⁰

[5] The applicant sought a review of that decision. She was advised by the Registrar that the review would be referred to three judges of the Court but that was subject to the filing fee being paid or a fee waiver application being granted. The fee waiver application was declined.

³ *Siemer v Attorney-General* [2018] NZHC 3406.

⁴ At [108]

⁵ *Siemer* (DC), above n 2, at [10].

⁶ At [11].

⁷ At [12]–[13].

⁸ At [14].

⁹ At [15].

¹⁰ The applicant questions the reliance on s 69(a). I do not address that aspect.

The application for review

[6] The application for review of the Registrar's decision not to waive the filing fee payable on the application for leave raises three grounds. First, it is said the refusal did not address the merits of the proposed appeal and, particularly, the public interest in the denial of access to the court. The applicant argues she has been unlawfully discriminated against on the basis of her marital status. Second, the applicant says there is an absence of particulars as to the further information required by the Registrar in support of the claim the applicant is unable to pay the filing fee. Finally, the applicant challenges the decision to decline the application for waiver when the Registrar has also refused to accept the application for leave to appeal for filing.

[7] Regulation 5(2) of the Supreme Court Fees Regulations 2003 provides that the Registrar may waive the fee "if satisfied" that the appeal "concerns a matter of genuine public interest"¹¹ and "is unlikely to be commenced or continued unless the fee is waived".¹² Those are the criteria against which the present application is to be assessed.

[8] As to the first ground, the Registrar considered the judgment of Downs J was fact-specific and did not raise any more general question. I agree with the Registrar's assessment. The decision not to grant leave is very much tied to the combination of particular facts of which the Judge's view the claim was brought by the applicant as a proxy for her husband was but one aspect.

[9] On the second ground, the form completed by the applicant describes the type of financial information sought. No financial information was provided.

[10] Nor do I see any merit in the third ground. The effect of the Supreme Court Fees Regulations is that the filing fee was payable absent waiver or postponement pending consideration of the application for waiver.¹³ Absent payment or waiver of payment, there is no requirement to consider the application for leave.

¹¹ Regulation 5(2)(i); and see reg 5(4).

¹² Regulation 5(2)(ii).

¹³ Regulations 5 and 6.

[11] In these circumstances I consider the decision of the Registrar not to waive the filing fee was correct. The application for review is dismissed.