

IN THE SUPREME COURT OF NEW ZEALAND

SC 73/2017  
[2017] NZSC 140

BETWEEN JAWAHAR BHASKAR MUSUKU  
Applicant

AND COMMISSIONER OF INLAND  
REVENUE  
Respondent

Court: Elias CJ, William Young and O'Regan JJ

Counsel: G J Thwaite for Applicant  
M Deligiannis and M J Bryant for Respondent

Judgment: 14 September 2017

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JUDGMENT OF THE COURT

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**An extension of time is granted but the application for leave to appeal is dismissed.**

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REASONS

[1] The applicant appealed to the Court of Appeal against an order adjudicating him bankrupt on the application of the Commissioner of Inland Revenue.<sup>1</sup> His application for an order dispensing with the provision of security for costs was refused by the Deputy Registrar and his application to review that refusal was dismissed by Brown J,<sup>2</sup> as was an application for a recall of that judgment.<sup>3</sup> He now seeks leave to appeal against the judgment dismissing his application for review and seeks an associated extension of time. We grant an extension as sought.

[2] The applicant is facing over 70 charges under the Crimes Act 1961 which relate to alleged offending relating to PAYE and GST returns. He is apparently

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<sup>1</sup> *Commissioner of Inland Revenue v Musuku* [2016] NZHC 2773 (Associate Judge Doogue).

<sup>2</sup> *Musuku v Commissioner of Inland Revenue* [2017] NZCA 144 [*Musuku* (CA)].

<sup>3</sup> *Musuku v Commissioner of Inland Revenue* [2017] NZCA 255.

living in Australia and there is an outstanding warrant out for his arrest. He has provided no evidence indicative of an actual inability to provide security for costs (as opposed to what might be inferred from his bankruptcy). In the decision under challenge, Brown J evaluated the application in terms of the approach adopted in *Reekie v Attorney-General*.<sup>4</sup>

[3] If leave to appeal were granted, the applicant would contend that the *Reekie* principles require adaptation in the present case because: (a) it involves an appeal challenging a bankruptcy order; (b) the Commissioner is the prosecutor in the criminal proceedings and the practical effect of the bankruptcy will be to require the applicant to defend those charges on legal aid and thus without the practical ability to choose his counsel; and (c) there are outstanding issues between the applicant and the Commissioner in other proceedings. He also would argue that the willingness of counsel to appear for him on appeal warrants dispensation with security for costs.

[4] The *Reekie* principles are sufficiently broad to encompass the present circumstances. They were appropriately applied by Brown J. The case thus does not involve an issue of public or general importance and there is no appearance of a miscarriage of justice.

[5] The application is accordingly dismissed. In light of the bankruptcy of the applicant, we make no order for costs.

Solicitors:  
Gregory J Thwaite, Auckland for Applicant  
Crown Law Office, Wellington for Respondent

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<sup>4</sup> *Musuku* (CA), above n 2, at [3]–[13]; citing *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737.