

IN THE SUPREME COURT OF NEW ZEALAND

SC 84/2017
[2017] NZSC 155

BETWEEN JOANNE MIHINUI, MATATAHI
MIHINUI AND TANIA MIHINUI
Applicants

AND ATTORNEY-GENERAL FOR THE
MINISTRY OF EDUCATION
First Respondent

WESTERMAN PROPERTY
SOLUTIONS LIMITED
Second Respondent

Court: Elias CJ, Glazebrook and Ellen France JJ

Counsel: J Mihinui in person for Applicants
S S Eccles for First Respondent

Judgment: 10 October 2017

JUDGMENT OF THE COURT

- A The application for an extension of time is granted.**
- B The applications for leave to appeal and for a stay are dismissed.**
- C The applicants must pay costs of \$2,500 to the first respondent.**
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REASONS

Introduction

[1] The applicants maintain that they are entitled to possession of properties in Turangi, formerly used for teachers' accommodation and now required by the Ministry of Education for use in a Treaty settlement and, in some cases, for Ministry

purposes. The applicants have pursued various challenges to orders for possession of the properties obtained by the Ministry in 2015 before the Tenancy Tribunal (the Tribunal).¹ They now seek leave to appeal to this Court and a stay pending appeal.

[2] The first issue raised by the application for leave is whether the Court has jurisdiction to hear the appeal.² In order to decide that question it is necessary to set out the history of the proceedings and the relevant statutory provisions.

Background

[3] The orders for possession were made by the Tribunal under s 65 of the Residential Tenancies Act 1986 (the Act). Under that provision, the Tribunal shall make a possession order if, on the application of any person entitled to possession, it is satisfied that “any other person is in possession of the premises as a squatter or trespasser”.³

[4] Section 117 of the Act provides for an appeal from a decision of the Tribunal under s 65, amongst other matters. Joanne Mihinui appealed to the District Court against the decision to make the possession orders. Her appeal was dismissed.⁴

[5] Under s 119 of the Act, there is a right of appeal on a point of law from the District Court to the High Court. The present applicants appealed to the High Court. Their appeal was dismissed by Palmer J.⁵

[6] Section 120(1) of the Act provides that a party to an appeal under s 119 may, with the leave of the High Court or (if that leave is refused) with special leave of the Court of Appeal, appeal to the Court of Appeal against the determination of the High Court. An application for leave to appeal to the Court of Appeal was made to the High Court. Palmer J subsequently declined to grant leave.⁶

¹ *Ministry of Education v The Occupiers* NZTT Taupo 14/01790/RO, 30 January 2015.

² The parties were asked to provide written submissions on this question and did so. We have determined the matter can be dealt with on the papers.

³ Residential Tenancies Act 1986, s 65(1).

⁴ *Mihinui v Attorney-General for the Ministry of Education* [2015] NZDC 24107 (Judge McGuire).

⁵ *Mihinui v Attorney-General for the Ministry of Education* [2017] NZHC 56.

⁶ *Mihinui v Attorney-General for the Ministry of Education* [2017] NZHC 654.

[7] Section 120(3) of the Act provides that in this situation, where the High Court has declined leave, special leave may be sought from the Court of Appeal. The sub-section provides that the Court of Appeal may grant leave “if, in its opinion, the appeal involves a question of law that, because of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision”. The Court of Appeal declined to grant special leave.⁷ A stay of execution of the High Court judgment pending appeal was accordingly declined. The applicants now apply to this Court.

[8] The question as to this Court’s jurisdiction arises because of s 120(5) and (6). These subsections read as follows:

(5) *The decision of the Court of Appeal on any appeal under this section shall be final; and the same judgment shall be entered in the High Court, and the same consequences and proceedings shall follow thereon, as if the decision of the Court of Appeal had been given in the High Court.*

(6) *The decision of the Court of Appeal on any application to that court for leave to appeal shall be final.*

(emphasis added).

[9] Under the Supreme Court Act 2003 and the Senior Courts Act 2016, this Court may hear and determine civil appeals against decisions made by the Court of Appeal unless another Act provides that there is no right of appeal or the decision is a refusal, relevantly, to give special leave to appeal to the Court of Appeal.⁸ Both Acts also enable a leapfrog appeal, that is, an appeal directly from the High Court but not where another Act provides that there is no right of appeal, or where the decision is a refusal, relevantly, to grant special leave, or the decision is made on an interlocutory application.⁹

Discussion

[10] As this Court noted in *J (SC 93/2016) v Accident Compensation Corporation*, in cases dealing with jurisdiction this Court has adopted a “reasonably expansive

⁷ *Mihinui v Attorney-General for the Ministry of Education* [2017] NZCA 263 (Harrison, French and Winkelmann JJ).

⁸ Supreme Court Act 2003, s 7; and Senior Courts Act 2016, s 68.

⁹ Supreme Court Act, s 8; and Senior Courts Act, s 69.

approach”.¹⁰ The Court in *J (SC 93/2016)* cited the following excerpt from *Guo v Minister of Immigration*:¹¹

In interpreting the Supreme Court Act on the issue of jurisdiction, our approach is to consider whether the statutory language clearly restricts the Court’s jurisdiction. If it does not, that is a powerful indicator that the Court has jurisdiction.

[11] However, in *Guo*, in contrast to *J (SC 93/2016)* (and the present case), the relevant legislation (the Immigration Act 2009) contemplated appeals to this Court.¹²

[12] The Court in *J (SC 93/2016)* went on to state that:¹³

But, in cases such as the present ... where the Act provides for an appeal only to the Court of Appeal and not for a further appeal from the Court of Appeal to the Supreme Court – substituting an appeal to the Supreme Court for the appeal to the Court of Appeal would be contrary to the general scheme of the appeal provisions. That was the approach adopted in [an earlier case] and we propose to apply it.

[13] In this respect, there is no difference between the statutory scheme of the Residential Tenancies Act and that in issue in *J (SC 93/2016)*. In both cases, the appeal provisions expressly make it clear that an appeal to this Court is not anticipated. As was the case in *J (SC 93/2016)*, it would be contrary to the scheme of the appeal provisions in the Residential Tenancies Act to construe the Act as providing for a right of appeal against that background.

[14] We add that this approach is supported by the legislative history of the introduction of the relevant provisions of the Supreme Court Act. That history is discussed by the Court in *J (SC 93/2016)*. As the Court observed, it is apparent “that the legislature was well aware that there continued to be appeal restrictions which would prevent certain judgments being challenged in the Supreme Court”.¹⁴ The present case is another example of those restrictions.¹⁵

¹⁰ *J (SC 93/2016) v Accident Compensation Corporation* [2017] NZSC 3 at [9].

¹¹ *Guo v Minister of Immigration* [2015] NZSC 76, [2015] 1 NZLR 732 at [17].

¹² At [18].

¹³ *J (SC 93/2016)*, above n 10, at [12].

¹⁴ At [8].

¹⁵ There were no changes to the Residential Tenancies Act enacted as part of the Supreme Court Act.

[15] For these reasons, the application for leave to appeal is declined.¹⁶ It follows that there is no basis to grant a stay of execution of the High Court judgment pending appeal. We award the first respondent costs of \$2,500.

Solicitors:
Crown Law Office, Wellington for First Respondent

¹⁶ The application for leave to appeal was out of time but the delay is explained. We grant an extension of time.