IN THE SUPREME COURT OF NEW ZEALAND

SC 21/2016
[2016] NZSC 60

BETWEEN	JOHN MORGAN MACKENZIE Applicant
AND	THE ATTORNEY-GENERAL Respondent

Court: Elias CJ, William Young and Arnold JJ

Counsel: Applicant in person
I M G Clarke for Respondent

Judgment: 1 June 2016

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant's son was severely injured on 1 October 1987 and died the next day in hospital. His heart was subsequently removed and the aortic valves transplanted into a teenage girl. He says that the removal of the heart and transplanting of the aortic valves were effected despite familial consent having been refused. The applicant was informed of the transplantation of the aortic valves by letter of 21 March 2005. On 24 November 2006, the Crown Health Funding Agency wrote to the applicant to the effect that it would not offer him compensation.

[2] The applicant's proceedings against the Attorney-General were commenced on 23 November 2012, more than 25 years after the key events to which they relate. In substance they are by way of complaint about the removal of his son's heart and seek, amongst other things, compensation. He sought legal aid for the proceedings but was unsuccessful; this primarily because of the limitation defence which was

available.[1] He challenged the refusal of legal aid as far as this Court. This resulted in two judgments: first the dismissal of his application for leave to appeal[2] and secondly a recall application.[3] In the second judgment, the Court noted that the applicant had "the fixed idea that time did not begin to run for limitation purposes" until receipt of the 24 November 2006 letter. The judgment pointed out that this was not in accordance with the way the Limitation Act 1950 operated.[4]

[3] The applicant's proceedings were struck out by Associate Judge Bell as barred by the Limitation Act 1950.[5] His application for review under subs 26P(1) of the Judicature Act 1908 was dismissed by Andrews J.[6] She too was of the view that the claim in relation to the removal of the applicant's son's heart was out of time.[7] She rejected attempts by the applicant to broaden the scope of his claim to encompass a challenges to the letter of 26 November 2006 and in particular to allege tortious conduct on the part of the Crown Law Office. Any claim along the lines foreshadowed would itself be time barred.[8]

[4] Applications for leave to appeal against the judgment of Andrews J were later dismissed by Andrews J[9] and the Court of Appeal.[10]

[5] He now seeks leave to appeal to this Court against the substantive judgment of Andrews J.

[6] The respondent maintains that there is no jurisdiction to hear the proposed appeal. This contention is based on subs 26P(1AA) of the Judicature Act, which provides:

> The determination of the High Court on a review under subsection (1) is final, unless the High Court gives leave (or the High Court refuses leave, but

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1 See *Re CE (CIVIL)* [2012] NZLAT 023; and *MacKenzie v Legal Services Commissioner* [2012] NZHC 3098.
2 *MacKenzie v Legal Services Commissioner* [2014] NZSC 23.
3 *MacKenzie v Legal Services Commissioner* [2014] NZSC 49.
4 At [2].
5 *MacKenzie v Attorney-General* [2015] NZHC 191 at [93].
6 *MacKenzie v Attorney-General* [2015] NZHC 1876 at [50]–[51].
7 At [43]–[46].
8 At [47]–[49].
9 *MacKenzie v Attorney-General* [2015] NZHC 2208.
10 *MacKenzie v Attorney-General* [2015] NZCA 24.

> the Court of Appeal gives special leave) to appeal from it to the Court of Appeal.

As mentioned above, the substantive judgment of Andrews J was under subs 26P(1). Applications for leave and special leave to appeal against the substantive judgment of Andrews J having been dismissed, the effect of subs 26(1AA) is that the judgment is final and accordingly there is no jurisdiction for this Court to entertain an appeal from it.[11]

[7] Even if there was jurisdiction to grant leave to appeal, we would not do so. The applicant's arguments seem to come down to the propositions that either there was no cause of action prior to his receipt of the 26 November 2006 letter or that this letter gave rise to a different cause of action. These arguments have been carefully analysed in the judgments in the High Court and Court of Appeal and (in relation to the first of them) in the context of the legal aid litigation. Contrary to the perceptions of the applicant, they do not give rise to a question of public or general importance and there is no appearance of a miscarriage of justice.

Solicitors:
Crown Law Office, Wellington for Respondent

[11] See s 8(a) of the Supreme Court Act 2003.