

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

[2019] NZSC 31

BETWEEN

MIRIAM CLEMENTS
Applicant

AND

QUEEN OF ENGLAND AND OTHERS
Respondents

Counsel: Applicant in person

Judgment: 21 March 2019

JUDGMENT OF O'REGAN J

The application for review of the decision of the Deputy Registrar to refuse to waive the payment of filing fees for the applicant's application for leave to appeal and application for injunctive relief is dismissed.

REASONS

[1] On 4 March 2019, the applicant submitted to the Registry of this Court an application for leave to appeal and an application for "injunctive relief".

[2] On 5 March 2019, the applicant filed an application for waiver of the filing fees of \$1,100 in relation to the application for leave to appeal and \$400 in relation to the application for injunctive relief.

[3] On 11 March 2019, the Deputy Registrar of this Court declined the application for waiver of both fees.

[4] On 12 March 2019, the applicant applied for a review of the decision of the Deputy Registrar to decline to waive the filing fees referred to above. That application

was made under s 160(1) of the Senior Courts Act 2016. The application for review has been referred to me for decision.

[5] The decision against which the applicant seeks leave to appeal is a decision of a Court of Appeal Judge, Asher J, declining an application for review of a decision of the Registrar of the Court of Appeal.¹ The applicant had applied to the Registrar of the Court of Appeal to waive the filing fee for an application she wished to make under r 43 of the Court of Appeal (Civil) Rules 2005 for an extension of time for the filing of the case on appeal and seeking a hearing of her appeal to that Court. Her application for waiver of the fee was made on the basis that the underlying proceeding concerned a matter of general public interest and was unlikely to be commenced or continued unless the fee were waived.²

[6] Asher J did not accept that this requirement was met. He noted that the issues raised in the appeal were notionally of public interest (the issues concerned the use of 1080 poison) but noted that difficulties arose such that any public interest value was diminished. He continued:³

Orders are sought that the Court cannot make. The claim is difficult to understand and does not clearly identify decisions that are challenged. There is no clear cause of action pleaded and no valid grounds for judicial review have been put forward.

[7] It is unclear why the applicant wished to extend time for filing of the case on appeal and for seeking a hearing date for her appeal to the Court of Appeal. There appears to be an element of futility about it because she has not paid the filing fee for that appeal, nor has she paid security for costs. Her application for a waiver of the filing fee and her application for dispensation with security for costs were rejected by the Registrar of the Court of Appeal. Her application for review of those decisions was dismissed by French J.⁴ A party who is in default of any obligation to pay security for costs or prescribed fees cannot apply for the allocation of a hearing date in the

¹ *Clements v The Queen of England* [2019] NZCA 12 [Asher J decision].

² Court of Appeal Fees Regulations 2001, reg 5(2).

³ At [4].

⁴ *Clements v Queen of England* [2018] NZCA 581. The applicant has not appealed against that decision.

Court of Appeal.⁵ So she appears to have been attempting to obtain an extension of time to do something she was not entitled to do.

[8] The application to the Registrar of this Court for waiver of the filing fee for the application for leave to appeal and for the application for injunctive relief was made not on the basis that the applicant was unable to pay the fee, but rather on the basis that the fee related to a proceeding concerning a matter of genuine public interest and that matter would not move forward unless the fee were paid.⁶ The Deputy Registrar of this Court was not satisfied that these criteria were met, noting that the proposed appeal was against a decision of a Court of Appeal Judge determining an application relating to the payment of fees in that Court which was not of significant public interest to the public or a substantial section of the public.

[9] I have reviewed the extensive material filed by the applicant and agree with the Deputy Registrar's assessment. The proposed appeal to this Court concerns only the decision of Asher J, upholding the Registrar of the Court of Appeal's decision to refuse a waiver of a filing fee. No matter of public interest arises. And I agree with the assessment of Asher J that the public interest value of the underlying proceeding is diminished by the shortcomings that led the High Court to strike it out.⁷

[10] The application for review is dismissed. If the applicant wishes to have her application for leave to appeal and application for injunctive relief accepted for filing, she must first pay the fees.

⁵ Court of Appeal (Civil) Rules 2005, r 37(2).

⁶ Supreme Court Fees Regulations 2003, reg 5(2)(b) and (4).

⁷ Asher J decision, above n 1, at [4]; and *Clements v Queen of England* [2018] NZHC 2244 (Woolford J).