

IN THE SUPREME COURT OF NEW ZEALAND

SC 91/2013
[2013] NZSC 116

BETWEEN VINCENT ROSS SIEMER
 Applicant

AND ATTORNEY-GENERAL
 Respondent

Court: McGrath, William Young and Glazebrook JJ

Counsel: Applicant in person
 P J Gunn for Respondent

Judgment: 14 November 2013

JUDGMENT OF THE COURT

- A The application is dismissed.**
- B The applicant is to pay costs of \$2,500 plus all reasonable disbursements (to be fixed, if necessary, by the Registrar) to the respondent.**
-

REASONS

[1] Mr Siemer seeks leave to appeal against a judgment of Harrison J of 22 August 2013 upholding the Court of Appeal Registrar's decision declining to dispense with security for costs.¹

Background

[2] In a decision of 16 May 2013,² Toogood J struck out Mr Siemer's claim that judges in this Court had breached his rights under the New Zealand Bill of Rights

¹ *Siemer v Attorney-General* [2013] NZCA 391.

1990 in handing down a decision on 8 November 2011.³ Mr Siemer filed two applications for recall of this Court's decision and both were dismissed.⁴

[3] Mr Siemer lodged several complaints with the Judicial Conduct Commissioner in relation to this Court's decisions. When these were dismissed by the Commissioner, Mr Siemer applied for judicial review. On 27 June 2012, summary judgment was entered for the defendants, dismissing the applications for review and refusing the relief sought.⁵ Mr Siemer appealed against this decision to the Court of Appeal.

[4] On 5 September 2012 Wild J upheld a decision of the Registrar of the Court of Appeal declining to dispense with security of costs, fixed at \$5,880, in respect of the appeal.

[5] Mr Siemer applied for leave to appeal against the decision of Wild J to this Court. On 1 November 2012, the application for leave to appeal was dismissed.⁶ Mr Siemer applied to recall that judgment. That application was dismissed on 9 November 2012.⁷

[6] Mr Siemer then applied on 21 November 2012 to recall both the 1 November 2012 leave judgment and the 9 November 2012 judgment dismissing the second application for recall. On 22 November 2012 Chambers J dismissed the 21 November 2012 application, noting that it was an abuse of process.

[7] Mr Siemer filed a claim in the High Court alleging that the Supreme Court had breached his right to natural justice, first in dismissing his appeal on 8 November 2011 and second in the Court's treatment of his recall application of 21 November 2012.⁸

² *Siemer v Attorney-General* [2013] NZHC 1111.

³ *Siemer v Heron* [2011] NZSC 133, [2012] 1 NZLR 309.

⁴ The first recall application was dismissed on 9 December 2011 in *Siemer v Heron* [2011] NZSC 151. The exact date on which the second recall application was dismissed is not available.

⁵ *Siemer v Judicial Conduct Commissioner* [2012] NZHC 1481 at [60].

⁶ *Siemer v Judicial Conduct Commissioner* [2012] NZSC 92.

⁷ *Siemer v Judicial Conduct Commissioner* [2012] NZSC 95.

⁸ *Siemer v Attorney-General*, above n 2, at [25].

[8] On 2 May 2013, Toogood J heard an application for strike-out of Mr Siemer's claim brought by the Attorney-General. At the beginning of the hearing, Mr Siemer requested Toogood J to recuse himself from dealing with the application.

[9] Toogood J refused the recusal request and the hearing proceeded. On 6 May 2013 Mr Siemer filed an appeal in the Court of Appeal against the recusal decision and sought to have security for costs dispensed with.⁹

[10] As noted above, on 16 May 2013, Toogood J struck out the claim brought by Mr Siemer against the Attorney-General.¹⁰ That judgment included reasons for his recusal decision.¹¹

[11] On 21 May 2013, Mr Siemer filed an appeal in the Court of Appeal against Toogood J's decision striking out the proceeding and sought waiver of security for costs.¹²

[12] On 24 May 2013 the Registrar of the Court of Appeal fixed security for costs for both the substantive appeal and the recusal appeal at \$5,880 each.

[13] By memorandum dated 29 May 2013, Mr Siemer asked the Registrar to address his application for dispensation of security in the substantive appeal.

[14] By letter dated 18 June 2013, the Registrar declined to dispense with security for costs in the substantive appeal.

[15] In an application dated 21 June 2013 Mr Siemer applied for a review of the decision of the Registrar on security for costs in both the recusal and the substantive appeal.

⁹ CA319/2013 (the recusal appeal).

¹⁰ *Siemer v Attorney-General*, above n 2. Toogood J held that the proceeding should be struck out on two grounds. First, requiring the Attorney-General to explain and defend the actions of members of the Supreme Court would, in accordance with the principles laid down in *Attorney-General v Chapman* [2011] NZSC 110, [2012] 1 NZLR 462, threaten the independence of the judiciary (at [51]). Secondly, the proceeding was a collateral attack on final decisions in previous proceedings made by a court of competent jurisdiction, and, as such, was an abuse of process (at [52]).

¹¹ At [2]–[14].

¹² CA309/2013 (the substantive appeal).

[16] By letter dated 9 August 2013, the Registrar refused to reduce or waive security for costs on the recusal appeal.

[17] In response, Mr Siemer filed a memorandum dated 16 August 2013 reiterating the earlier application he had made for waiver and stating that he awaited judicial determination on the issue of security sought in his memorandum of 21 June 2013.

[18] In a judgment dated 22 August 2013, Harrison J dismissed the application to review the Registrar's decision on costs in the recusal appeal (CA319/2013) and ordered the applicant to pay the \$5,880 security for costs by 30 August 2013. He directed that no further documents or correspondence in relation to the matter would be accepted by the Court of Appeal Registry until the security was paid.

Our assessment

[19] Notice was given to Mr Siemer by the Court of Appeal Registry on 4 September 2013 that his appeal in CA319/2013 had been deemed abandoned under r 43 Court of Appeal (Civil) Rules 2005 on the basis that security for costs had not been paid by the due date of 30 August, as ordered by Harrison J.

[20] This means that there is no underlying appeal to form the basis of the current application.¹³ In any event, Harrison J applied established legal principles to the issue of security for costs. Nothing raised by Mr Siemer points to a risk of a substantial miscarriage of justice.

[21] It does not appear that the review of the Registrar's decision not to dispense with security for costs on the substantive appeal has yet been heard.¹⁴

¹³ *Siemer v Heron*, above n 3, at [40] per Elias CJ, Blanchard, Tipping and McGrath JJ; and [59] per William Young J.

¹⁴ We comment that it is perhaps surprising that there were two appeals in this case, rather than the one appeal dealing with both the recusal issue and the substantive appeal against the strikeout. We comment that it may be that the recusal point may be able to be raised in the substantive appeal in any event.

Result

[22] The application for leave to appeal is dismissed.

[23] Mr Siemer is to pay costs of \$2,500 plus all reasonable disbursements (to be fixed, if necessary, by the Registrar) to the respondent.

Solicitors:
Crown Law Office for Respondent