IN THE SUPREME COURT OF NEW ZEALAND

SC 34/2013
[2013] NZSC 52

BETWEEN	JOHN COLMAN Applicant
AND	ATTORNEY-GENERAL Respondent

Court: Elias CJ, William Young and Chambers JJ

Counsel: Applicant in person
M C Coleman for Respondent

Judgment: 17 May 2013

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant filed nine separate sets of proceedings in the District Court against the Attorney-General. These arise out of an incident which occurred on 17 December 2007 and resulted in the applicant being arrested and charged with disorderly conduct. Subsequently, a second information was laid. This alleged the use of insulting language. The applicant was not aware of the second information and this resulted in a procedural imbroglio leading to much litigation. In the proceedings filed in the District Court, the applicant seeks relief under the New Zealand Bill of Rights Act 1990 in relation to events surrounding his arrest and the subsequent prosecution and later appeal.

[2] In the District Court all claims were struck out, save for one which related to the arrest.[1] The Judge saw the other claims as "a collateral attack on previous decisions of the Court".[2] The applicant's appeal to the High Court was successful in relation to a claim focussing on the failure of the police to inform him of the laying of the second information but was otherwise unsuccessful.[3] The High Court Judge considered that the other claims were either an abuse of the process of the Court (as amounting to a collateral attack on earlier judgments) or were otherwise not reasonably arguable. Applications for leave to appeal to the Court of Appeal against the High Court judgment were later declined by both the High Court[4] and Court of Appeal.[5]

[3] He now seeks leave to appeal to this Court against the substantive High Court decision.[6]

[4] Section 7(b) of the Supreme Court Act 2003 precludes appeal to this Court against a decision of the Court of Appeal to refuse leave to appeal. But – and contrary to the submission made on behalf of the Attorney-General – this Court nonetheless has jurisdiction to grant leave to appeal against the High Court judgment, albeit that it will only do so if there are compelling circumstances which warrant the circumvention of the s 7(b) jurisdictional limitation.[7] As well s 14 of the Supreme Court Act 2003, which deals generally with leap-frog appeals, provides that leave to appeal should be granted only if the Court is satisfied that there are "exceptional circumstances" which justify taking the proposed appeal. And, of course, an applicant must also meet the s 13 criteria.

---

1 *Colman v Attorney-General* DC Whangarei CIV-2011-088-104, 10 October 2011.
2 At [9].
3 *Colman v Attorney-General* [2012] NZHC 1343
4 *Colman v Attorney-General* [2012] NZHC 2208.
5 *Colman v Attorney-General* [2013] NZCA 92.
6 The application for leave to appeal is expressed to be in relation to one only of the struck out claims and the applicant seeks to treat this as a "test case for the others". Presumably the intention is that there should be separate appeals for each of the struck out claims. Somewhat awkwardly the file number which he has provided (CIV-2011-088-204) does not seem to correlate to any of the claims referred to in the lower courts. These include CIV-2011-088-203 and CIV-2011-088-240 but not CIV 2011-088-204. More significantly, however, we do not accept that the applicant is entitled to proceed in this piece-meal way. There is only one High Court judgment and there could only be one appeal in respect of it.
7 See *Clarke v R* [2005] NZSC 60 at [3].

[5] The claims face legal difficulties. There is much focus on judicial conduct so they must therefore be assessed in light of the judgment of this Court in *Attorney-General v Chapman*.[8] As well, because the claims challenge events which took place in other litigation, they are of kind which the courts are often reluctant to entertain.

[6] The case has so far been addressed by the District Court, High Court and Court of Appeal. In the High Court judgment, each of the claims was carefully reviewed. Although the Court of Appeal refused leave to appeal, it too carefully reviewed all of the claims. We see no obvious error in the approach taken by the High Court and Court of Appeal.

[7] The applicant is entitled to go to trial on his complaints in relation to what happened at the time of his arrest and in respect of the failure to notify him of the laying of the second information, which is very much at the heart of his concerns about what has happened. There is thus no question of the applicant being deprived of his day in court.

[8] We note that the applicant says that he has "no idea" why some claims have been said to collaterally attack earlier judicial decisions. This, however, is explained in some detail in both the High Court and Court of Appeal judgments. For instance, one of his claims (CIV-2011-088-217) challenges the conclusion of a District Court Judge that neither s 48 nor s 56 of the Crimes Act 1961 provided him with a defence. This conclusion resulted in the applicant being limited as to the scope of cross-examination. The view of the District Court Judge was later upheld in the High Court on appeal. A claim that the District Court Judge's ruling was in breach of the applicant's fair trial rights is self-evidently an attack on the rulings of both the District Court Judge and the High Court Judge made in the course of the prosecution and the subsequent appeal. This attack is collateral in the sense that it is made in separate proceedings (that is, not in the original criminal proceedings or in the subsequent appeal) and involves a revisiting of issues which have already been judicially determined.

---

[8] *Attorney-General v Chapman* [2011] NZSC 110; [2012] 1 NZLR 462.

[9] We are also conscious of the applicant's resentment about the awards of costs which have been made against him. The details of the awards are not before us but given that our costs rules proceed on the basis that costs usually follow the event, it is not entirely surprising that the applicant's unusual litigation strategy (for instance, issuing nine separate proceedings in relation to what is a single, if somewhat convoluted, sequence of events) and the multitudinous allegations advanced have resulted in costs orders being made against him.

[10] In light of these considerations – along with our general appreciation of the case – the applicant has not come close to persuading us to take the exceptional course of allowing a leap-frog appeal.

Solicitors:
Crown Law Office, Wellington