

IN THE SUPREME COURT OF NEW ZEALAND

SC 75/2014
[2014] NZSC 132

BETWEEN RAZDAN RAFIQ
Applicant

AND COMMISSIONER OF NEW ZEALAND
POLICE
Respondent

Court: Elias CJ, Arnold and O'Regan JJ

Counsel: Applicant in person
A Todd for Respondent

Judgment: 26 September 2014

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant must pay costs of \$2,500 to the respondent, plus reasonable disbursements.**
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REASONS

[1] The applicant, Mr Rafiq, issued defamation proceedings against the Commissioner of Police in respect of six instances of defamation and sought summary judgment. In addition, he sought leave to issue defamation proceedings out of time against the Commissioner in respect of alleged defamatory statements made in 2008 and 2009.¹ In two decisions delivered contemporaneously, Courtney J:

- (a) refused Mr Rafiq's application for leave to bring proceedings in relation to the two alleged defamations in 2008 and 2009.² The result

¹ Under the Limitation Act 1950, s 4(6A) and (6B).

² *Rafiq v Commissioner of New Zealand Police* [2014] NZHC 814.

was that this proceeding remained on foot only in respect of an alleged defamation made in 2011 (the first decision); and

- (b) declined Mr Rafiq's application for summary judgment because there were disputed issues of fact and arguable issues about immunity and privilege, struck out some of the causes of action on the basis that they were a re-pleading of allegations previously struck out, ordered Mr Rafiq to pay \$10,000 as security for costs and consolidated this proceeding with what remained of Mr Rafiq's other defamation proceeding (the second decision).³

[2] Mr Rafiq filed appeals against both decisions and sought waivers from the requirement to pay security for costs in each. The Registrar of the Court of Appeal declined his application in relation to the appeal against the second decision and fixed the amount of security at \$5,880.⁴ Mr Rafiq sought a review of the Registrar's decision by a Judge of the Court of Appeal. Harrison J dismissed Mr Rafiq's application for review.⁵ Mr Rafiq now seeks leave to appeal to this Court against Harrison J's decision.

[3] Mr Rafiq advances three grounds of appeal:

- (a) His application for review of the Registrar's decision should have been determined by a panel of three Judges rather than by a single Judge.
- (b) Harrison J erred in certain respects in determining his application.
- (c) The Court of Appeal was "generally motivated by malice".

³ *Rafiq v Commissioner of New Zealand Police* [2014] NZHC 813.

⁴ Although Mr Rafiq makes submissions in relation to Courtney J's first decision, the Crown advises that the Court of Appeal has not issued a decision on Mr Rafiq's application for review of the Registrar's decision in relation to that appeal.

⁵ *Rafiq v Commissioner of New Zealand Police* [2014] NZCA 321.

[4] The first ground is untenable. There is clear legislative authority for a review of a Registrar's decision as to security for costs by a single Judge of the Court.⁶

[5] As to the second ground, this Court settled the approach to the fixing of security for costs on an appeal in *Reekie v Attorney-General*.⁷ Accordingly, the present case does not raise any issue of general or public importance.

[6] In relation to the third ground, we do not accept the unsubstantiated assertion that the Court of Appeal was motivated by malice.

[7] As to the risk that there has been a substantial miscarriage of justice, Harrison J expressed the view that Mr Rafiq's appeal against the second decision was without merit and had no prospect of success. Having considered Courtney J's judgment, we see no obvious reason to disagree with that assessment.

[8] The application for leave to appeal is dismissed. Mr Rafiq must pay costs of \$2,500 to the respondent, plus reasonable disbursements.

Solicitors:
Crown Law Office, Auckland for Respondent

⁶ See Judicature Act 1908, s 61A(3) and Court of Appeal (Civil) Rules 2005, r 7(2).

⁷ *Reekie v Attorney-General* [2014] NZSC 63.