

IN THE SUPREME COURT OF NEW ZEALAND

SC 94/2013
[2014] NZSC 46

BETWEEN JOHN KENNETH SLAVICH
Applicant

AND ATTORNEY-GENERAL
Respondent

Court: Elias CJ, William Young and Arnold JJ

Counsel: Applicant in person
P J Gunn for Respondent

Judgment: 1 May 2014

JUDGMENT OF THE COURT

The application for recall is dismissed.

REASONS

[1] Mr Slavich sought leave to appeal against a judgment of Harrison J delivered on 8 August 2013 dismissing Mr Slavich's application to review a decision of the Registrar of the Court of Appeal as to security for costs in relation to two appeals in which he was the appellant.¹ This application was dismissed in a judgment delivered on 26 November 2013.² Mr Slavich applied for the recall or an amendment of that judgment so as to set a new date for the giving of security. Both applications were dismissed in a judgment delivered on 19 March 2014.³ As the latter judgment indicates, it was not apparent to the Court why the amendment was sought. The order as to security was not made on an "unless" basis. Accordingly, the Court thought that it would have been open to Mr Slavich to pay the security at any time.

¹ *Slavich v Attorney-General* [2013] NZCA 356.

² *Slavich v Attorney-General* [2013] NZSC 130.

³ *Slavich v Attorney-General* [2014] NZSC 22.

[2] Mr Slavich now seeks the recall of the 19 March 2014 judgment. It is apparent from the material which he has supplied that he had not obtained extensions of time for applying for hearing dates or for filing the cases on appeal in respect of his two appeals to the Court of Appeal. As a result, both appeals were deemed to be abandoned under r 43 of the Court of Appeal (Civil) Rules 2005. Notice to this effect was given to Mr Slavich on or around 10 September 2013. He says that this Court was therefore wrong to have assumed that he could pay the security and carry on with his appeals, and this is the primary basis of his recall application.

[3] The abandonment of the appeals was not disclosed in Mr Slavich's 24 September 2013 submissions in support of his leave application. Nor was it disclosed when he applied for the 26 November 2013 judgment to be amended. The judges who dealt with his application for leave to appeal and the later recall and amendment applications thus were not aware that Mr Slavich's appeals to the Court of Appeal were no longer current. It follows that the Court was also wrong in thinking that Mr Slavich could pay the security at any time. This, however, does not provide a basis for acceding to Mr Slavich's current application.

[4] Mr Slavich may have thought that if this Court had reset the time for providing security, it would have resuscitated his abandoned appeals. It is, however, not apparent why that should be so. There is nothing in the rules to suggest that Mr Slavich's application for leave to appeal in relation to security put on hold the time limits provided for in r 43. If Mr Slavich wished to keep his appeals alive while he pursued his challenge in this Court to the judgment of Harrison J, he should have applied for an extension of time under that rule. The power to grant such an extension is vested in the judges of the Court of Appeal and is not capable of exercise by the judges of this Court. There would have been no point in this Court fixing a new date for the provision of security in relation to appeals which have already been abandoned. So the abandonment of the appeals before the earlier judgments were delivered does not provide a basis for either recall or amendment.⁴

⁴ A similar situation arose in *Siemer v Heron* [2011] NZSC 111, [2012] 1 NZLR 309. The relevant discussion is at [39]–[40].

[5] The recall application is accordingly dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent