

IN THE SUPREME COURT OF NEW ZEALAND

SC 48/2015
[2015] NZSC 102

BETWEEN VINCENT ROSS SIEMER AND JANE
DINSDALE SIEMER
Applicants

AND KEVIN STANLEY BROWN
First Respondent

M PALMA
Second Respondent

A LOVELOCK
Third Respondent

JANE THEW
Fourth Respondent

REECE SIRL
Fifth Respondent

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Court: Elias CJ, Glazebrook and O'Regan JJ

Counsel: V R Siemer in person
A M Powell and E J Devine for First to Fourteenth Respondents
V E Casey for Fifteenth Respondent

Judgment: 14 July 2015

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicants must pay costs to the first to fourteenth respondents (collectively) of \$1,500 and costs of \$1,500 to the fifteenth respondent. Their liability is joint and several.**

JULIE FOSTER
Sixth Respondent

JOHN MILLER
Seventh Respondent

DAVID THOMAS
Eighth Respondent

BRETT OTTO
Ninth Respondent

TREVOR FRANKLIN
Tenth Respondent

JOHN TAYLOR
Eleventh Respondent

JUERGEN ARNDT
Twelfth Respondent

KERWIN STEWART
Thirteenth Respondent

THE ATTORNEY-GENERAL OF NEW
ZEALAND
Fourteenth Respondent

B J REID
Fifteenth Respondent

REASONS

[1] The applicants seek leave to appeal against a decision of Wild J.¹ In that decision, Wild J dealt with an application by the applicants to review a decision of the Registrar of the Court of Appeal refusing to accept for filing an application for a review by a panel of three Court of Appeal judges² of a decision made by Wild J upholding the decision of the Registrar of the Court of Appeal to refuse to dispense with security for costs in relation to an appeal before the Court of Appeal.

¹ *Siemer v Brown* [2015] NZCA 161.

² *Siemer v Brown* [2015] NZCA 69.

[2] The background to the appeal before the Court of Appeal is set out in *Siemer v Brown*.³

[3] In *Siemer v Stiassny*, this Court made it clear that there was no right of review by a panel of three Court of Appeal Judges of a decision by a single Judge dealing with an application for review of a decision by the Registrar under s 61A(3) of the Judicature Act 1908.⁴ The Court said:⁵

The power for a single judge to review the decision of the Registrar [of the Court of Appeal] arises under s 61A(3) of the Judicature Act 1908. The Court of Appeal's powers under s 61A(2) to review decisions made by a single judge of that Court are expressly limited to the review of interlocutory and incidental orders made by a single judge in chambers pursuant to s 61A(1). There is no power for the Court to review decisions made under s 61A(3).

[4] The applicants' attempt to file an application for review in circumstances where this Court had clearly ruled no right of review existed made it inevitable that the Registrar of the Court of Appeal would refuse to accept the application for filing and that any application to review the decision of the Registrar would fail. Seeking to file the application for review in the Court of Appeal was an abuse of the Court's process. The subsequent attempt to have the decision of the Registrar reviewed by a Judge simply aggravated that.

[5] The applicants argue that Wild J had a conflict of interest because his decision had the effect of preventing a review of his earlier decision relating to security for costs. We do not accept that argument. No review of the earlier decision was available and the effect of Wild J's decision was simply to state the law. It did not prevent a review because no right of review existed.

[6] In *Siemer v Judicial Conduct Commissioner*, this Court dealt with, and dismissed, an application for leave to appeal in very similar circumstances.⁶ In that case the first named applicant, Mr Siemer, had appealed against a High Court decision and the Registrar of the Court of Appeal had set security for costs at \$5,880.

³ *Siemer v Brown* [2015] NZSC 4 at [41] and *Siemer v Brown* [2015] NZSC 62 at [1].

⁴ *Siemer v Stiassny* [2013] NZSC 11.

⁵ At [4]. A similar ruling was made in *Rabson v Chapman* [2013] NZSC 65 at [4].

⁶ *Siemer v Judicial Conduct Commissioner* [2013] NZSC 113.

The Registrar of the Court of Appeal declined an application for dispensation with security and French J declined an application for review of the Registrar's decision. Mr Siemer then applied for review of the decision of French J and she directed the Registrar to refuse to accept that application for filing because there was no right of review for the reasons outlined earlier. This Court said that the decision of French J to direct the Registrar to refuse to accept the application for filing was clearly correct.⁷

[7] The attempt to relitigate essentially the same point dealt with in *Siemer v Judicial Conduct Commissioner* is an abuse of the process of this Court. The respondent should not be required to deal with repeated applications which are manifestly without merit. This is the third application for leave to appeal that this Court has dealt with in relation to the present litigation.⁸ Both of the judgments dealing with the earlier applications were subject to unsuccessful applications for recall.⁹

[8] The applicants also argue that the decision of Wild J was in conflict with the Court of Appeal's decision in *Houghton v Saunders*, in which an issue relating to security for costs was dealt with by a panel of three Judges of the Court of Appeal.¹⁰ There is no such inconsistency. The panel in *Houghton v Saunders* was not undertaking a review of a decision of a single judge under s 61A(3), which is what the applicants were seeking in this case. As this Court said in *Rabson v Registrar of the Supreme Court*:¹¹

As this Court said in *Reekie*, the general rule under s 61A(2) is plain: it allows for a three judge bench to review decisions made under s 61A(1) but not under s 61A(3). In *Houghton*, the appellant was seeking an extension of time under r 43 of the Court of Appeal (Civil) Rules 2005; under r 43(2), the Court (ie a panel of three judges), in situations where the application is contested (as was the case in *Houghton*), may hear and grant an extension of time. In addition to an extension of time, the appellant was seeking directions regarding the electronic case on appeal and a review of the Registrar's decision increasing security for costs. It was open to the Court of Appeal to have the three-panel Court deal with security for costs at the same time as it was dealing with the other related matters.

⁷ At [6].

⁸ The others are noted in n 4 above.

⁹ *Siemer v Brown & Ors* [2015] NZSC 50 and *Siemer v Brown & Ors* [2015] NZSC 86.

¹⁰ *Houghton v Saunders* [2015] NZCA 141.

¹¹ *Rabson v Registrar of the Supreme Court* [2015] NZSC 74 at [5] (citations omitted).

[9] On 30 April 2014, an order was made against Mr Siemer under s 88B of the Judicature Act, which applies to any person who “has persistently and without any reasonable ground instituted vexatious legal proceedings”.¹² Since that time, he has filed the following applications in this Court:

- (a) SC 59/2014 (application filed 16 June 2014): An application for leave to appeal against a judgment of Clifford J in the High Court in which the Judge struck out judicial review proceedings against the Registrar of this Court. This Court refused leave.¹³
- (b) SC 86/2014 (application filed 20 August 2014): An application for leave to appeal against a judgment of the Court of Appeal in which that Court declined an application for an order that security for costs be dispensed with. This Court declined leave to appeal.¹⁴ An application for recall of that judgment was dismissed.¹⁵
- (c) SC 91/2014 (application filed 2 September 2014): An application for leave to appeal against a minute of French J in which the Judge declined an application made by Mr Siemer relating to costs for want of jurisdiction. This Court declined to grant leave to appeal.¹⁶ An application for recall of that decision was dismissed.¹⁷
- (d) SC 99/2014 (application filed 22 September 2014) and SC 108/2014 (application filed 9 October 2014): An application for leave to appeal against a judgment of French J relating to proceedings in the High Court in which Mr Siemer had sought judicial review of the decision of the Registrar of this Court to refuse access to certain documents. This Court refused leave to appeal.¹⁸ An application for recall of the decision was dismissed.¹⁹

¹² *Attorney-General v Siemer* [2014] NZHC 859.

¹³ *Siemer v Registrar of the Supreme Court* [2014] NZSC 100.

¹⁴ *Siemer v Judicial Conduct Commissioner* [2014] NZSC 138.

¹⁵ *Siemer v Judicial Conduct Commissioner* [2014] NZSC 152.

¹⁶ *Siemer v Registrar of the Supreme Court* [2014] NZSC 125.

¹⁷ *Siemer v Registrar of the Supreme Court* [2014] NZSC 143.

¹⁸ *Siemer v Registrar of the Supreme Court* [2014] NZSC 179.

¹⁹ *Siemer v Registrar of the Supreme Court* [2014] NZSC 192.

- (e) SC 130/2014 (application filed 28 November 2014): An application for leave to appeal against a High Court judgment dismissing an application for judicial review of certain decisions by the Registrar of the Court of Appeal. This Court refused leave to appeal.²⁰ An application for recall of this Court's decision refusing to grant leave was dismissed.²¹ A second application for recall was also dismissed,²² but the Court reissued the decision with an amendment to remedy a typographical error.²³ A third application for recall was also dismissed and the Registrar was directed not to accept further applications for recall.²⁴
- (f) On 27 January 2015, Mr Siemer attempted to file an application for leave to appeal against a decision of the Deputy Registrar of the Court of Appeal to refuse to accept for filing applications related to an appeal that had been abandoned. The Registrar of this Court refused to accept the application for leave to appeal to this Court. Mr Siemer sought review of the Registrar's decision. Glazebrook J dismissed the application.²⁵ Mr Siemer then made an application for review of Glazebrook J's decision, which was also dismissed.²⁶
- (g) SC 6/2015 (application filed 20 January 2015): An application for leave to appeal against a case management order made by White J in the Court of Appeal. The application was dismissed by this Court.²⁷ An application for recall of the decision refusing leave to appeal was dismissed.²⁸
- (h) SC 8/2015 (application filed 26 January 2015): An application for leave to appeal a High Court judgment in which Toogood J refused to

²⁰ *Siemer v O'Brien* [2015] NZSC 13.

²¹ *Siemer v O'Brien* [2015] NZSC 23.

²² *Siemer v O'Brien* [2015] NZSC 78.

²³ *Siemer v O'Brien* [2015] NZSC 79.

²⁴ *Siemer v O'Brien* [2015] NZSC 89.

²⁵ *Siemer v Registrar of the Supreme Court* [2015] NZSC 1.

²⁶ *Siemer v Registrar of the Supreme Court* [2015] NZSC 21.

²⁷ *Siemer v Registrar of the Supreme Court* [2015] NZSC 39.

²⁸ *Siemer v Registrar of the Supreme Court* [2015] NZSC 52.

recuse himself from a proceeding. Leave was refused.²⁹ An application for recall of that judgment was dismissed.³⁰

- (i) SC 24/2015 (application filed 23 March 2015): An application for leave to appeal against a decision of White J dismissing an application for review of a decision of the Deputy Registrar of the Court of Appeal refusing to dispense with security for costs. Leave was refused.³¹ An application for recall of that judgment was dismissed.³²
- (j) SC 31/2015 (application filed 31 March 2015): An application for leave to appeal against a decision of Wild J dismissing an application for review of a decision of the Registrar of the Court of Appeal refusing to dispense with security for costs. This Court dismissed the application.³³ An application for recall of this Court's decision was dismissed.³⁴
- (k) SC 32/2015 (application filed 31 March 2015): An application for leave to appeal against a procedural direction given by White J in the Court of Appeal dismissing a challenge to the Attorney-General's participation in an appeal to the Court of Appeal. Leave was refused.³⁵ An application for recall was dismissed.³⁶
- (l) The present application for leave to appeal.

²⁹ *Siemer v Brown* [2015] NZSC 41.

³⁰ *Siemer v Brown* [2015] NZSC 50.

³¹ *Siemer v O'Brien* [2015] NZSC 63.

³² *Siemer v Brown* [2015] NZSC 92.

³³ *Siemer v Brown* [2015] NZSC 62.

³⁴ *Siemer v Brown* [2015] NZSC 86.

³⁵ *Siemer v O'Brien* [2015] NZSC 64.

³⁶ *Siemer v O'Brien* [2015] NZSC 93.

[10] It is clear that the order against Mr Siemer under s 88B of the Judicature Act has not deterred him from continuing to pursue multiple applications in both the Court of Appeal and this Court, none of which has been found to have merit. This application is in that category. We dismiss it and award costs of \$1,500 to the first to fourteenth respondents (collectively) and to the fifteenth respondent.

Solicitors:
Crown Law Office, Wellington for Respondents