

IN THE SUPREME COURT OF NEW ZEALAND

SC 85/2015
[2015] NZSC 145

BETWEEN MALCOLM EDWARD RABSON
Applicant

AND TRANSPARENCY INTERNATIONAL
NEW ZEALAND INCORPORATED
Respondent

Court: William Young, Arnold and O'Regan JJ

Counsel: Applicant in person
D R Kalderimis and K E Yesberg for Respondent

Judgment: 16 October 2015

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.**
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REASONS

[1] Mr Rabson and Richard John Creser (the appellants) are the appellants in an appeal to the Court of Appeal. Mr Rabson applied for an extension of time for them to file the case on appeal and apply for a hearing date.¹ The application was referred to Wild J for decision.

[2] In a minute dated 4 August 2015,² the Judge observed that, because the appellants had not provided security for costs, there was no point in considering the application. The appellants had exhausted all avenues to have the requirement to

¹ Although Mr Rabson and Mr Creser are appellants on the record. Only Mr Rabson sought the extension of time. Mr Rabson alone seeks leave to appeal to this Court.

² *Rabson and Creser v Transparency International New Zealand Incorporated* CA156/2015, 4 August 2015 (Minute and Directions of Wild J).

provide security dispensed with.³ Under the Court of Appeal (Civil) Rules 2005, they were barred from applying for a fixture until they provided security whether they had an extension of time or not.⁴

[3] Mr Rabson, but not Mr Creser, seeks leave to appeal against Wild J's refusal to determine the application for an extension of time. He argues that it was improper for Wild J not to deal with the application. He complains about the delay in the issuing of the minute. He alleges bias because Wild J noted that the failure to provide security meant the respondent could seek to have the appeal struck out under r 37(1) of the Court of Appeal (Civil) Rules.

[4] We do not consider that any of the grounds for the grant of leave in s 13 of the Supreme Court Act 2003 is made out. Wild J's comments were statements of fact. No fair-minded observer would consider there was any indication of bias. The reality was that Mr Rabson was seeking an extension of time to take a step that was not open to him because the appellants had failed to provide security and had exhausted all available avenues to have that requirement dispensed with. It would have been futile to deal with the application unless and until the security was provided. The situation is fact-specific and no issue of public importance arises. There is no appearance of a miscarriage of justice.

[5] The application is dismissed. Mr Rabson must pay costs of \$2,500 to the respondent.

Solicitors:
Chapman Tripp, Wellington for Respondent

³ Their appeal to this Court against the decision to uphold the refusal to dispense with security was dismissed on 24 July 2015: *Rabson v Transparency International New Zealand Incorporated* [2015] NZSC 111. An application to recall that decision was dismissed: *Rabson v Transparency International New Zealand Incorporated* [2015] NZSC 121.

⁴ Court of Appeal (Civil) Rules 2005, r 37(2).