IN THE SUPREME COURT OF NEW ZEALAND

SC 12/2015
[2015] NZSC 74

BETWEEN	MALCOLM EDWARD RABSON Applicant
AND	REGISTRAR OF THE SUPREME COURT First Respondent
AND	MINISTRY OF JUSTICE Second Respondent

SC 20/2015

BETWEEN	MALCOLM EDWARD RABSON Applicant
AND	REGISTRAR OF THE SUPREME COURT First Respondent
AND	MINISTRY OF JUSTICE Second Respondent

Court:	Glazebrook, Arnold and O'Regan JJ
Counsel:	Applicant in person K Laurenson for the Respondents
Judgment:	29 May 2015

JUDGMENT OF THE COURT

The application for recall is dismissed.

REASONS

[1] In a judgment dated 12 May 2015, this Court dismissed Mr Rabson's two applications for leave to appeal in SC 12/2015 and SC 20/2015.[1] On the same day, Mr Rabson sought to recall that judgment.

[2] In SC 12/2015, Mr Rabson sought leave to appeal against a judgment of French J of 30 January 2015.[2] In that judgment, French J reviewed a decision of the Deputy Registrar of the Court of Appeal and also made a number of procedural orders. In SC 20/2015, Mr Rabson sought leave to appeal against a judgment of the Court of Appeal of 13 March 2015.[3]

[3] One of the proposed grounds for application for leave to appeal was on the basis that the Court of Appeal followed the incorrect procedure in terms of s 61A of the Judicature Act 1908. This Court stated that "[t]o the extent that the application relates to jurisdictional issues, these have been settled by this Court in *Reekie v Attorney-General*".[4]

[4] Mr Rabson seeks to recall this Court's judgment on the basis that, in light of a recent decision in the Court of Appeal in *Houghton v Saunders*,[5] this Court's statement[6] that this Court "settled" jurisdictional issues in *Reekie v Attorney-General* was incorrect.[7] Mr Rabson claims that while *Reekie* suggested that security for costs orders made by Court of Appeal Registrars are reviewable by a single judge under s 61A(3), the appellant in *Houghton* obtained a full hearing before a panel of three Court of Appeal judges. Mr Rabson claims this is "jurisdictional discrimination".

[5] As this Court said in *Reekie*,[8] 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

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1 *Rabson v Registrar of the Supreme Court* [2015] NZSC 58.
2 *Rabson v Registrar of the Supreme Court* [2015] NZCA 5.
3 *Rabson v Registrar of the Supreme Court* [2015] NZCA 68 (Randerson, White and Miller JJ).
4 *Rabson v Registrar of the Supreme Court*, above n 1, at [5].
5 *Houghton v Saunders* [2015] NZCA 141 (Stevens, Wild and Miller JJ).
6 *Rabson v Registrar of the Supreme Court*, above n 1, at [5].
7 *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737, (2014) 21 PRNZ 776 at [24]–[26].
8 At [24]–[26].

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.[9]

[6] In any event, even if (contrary to what we say above) the Court of Appeal had erred in *Houghton*, this does not justify granting leave to appeal. The principles governing such jurisdictional issues in the Court of Appeal were settled by this Court in *Reekie*. Any errors in applying that judgment in other cases cannot justify leave to appeal being granted in this case.

[7] In addition, as outlined in the judgment that is sought to be recalled, the applicant's case does not satisfy this Court's criteria for leave.[10] This is because the underlying jurisdictional issue was settled by this Court in *Reekie*, and to the extent that it relates to procedural orders in the Court of Appeal, these were in Mr Rabson's favour. The application therefore does not raise an issue of public or general importance.

[8] This means that the application for recall must be dismissed.

Solicitors:
Crown Law Office, Wellington for Respondents

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9 This does not mean that an applicant can require a three judge court to deal with security for costs.

10 *Rabson v Registrar of the Supreme Court*, above n 1, at [5].