IN THE SUPREME COURT OF NEW ZEALAND

SC 112/2016
[2016] NZSC 133

BETWEEN	MORRIS BURTON SUCKLING Applicant
AND	THE QUEEN Respondent

Court: William Young, Glazebrook and Arnold JJ

Counsel: Applicant in person
P D Marshall for Respondent

Judgment: 4 October 2016

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B There is no order for costs.

REASONS

[1] The applicant, Mr Suckling, has filed an application for leave to appeal against a decision of the Court of Appeal dismissing his appeal against conviction and sentence on various taxation charges.[1] This is the second application for leave that he has filed – the Court dismissed the first in a decision delivered on 4 July 2016.[2]

[2] In *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd*, this Court held that despite an earlier refusal of leave on unrelated grounds, the Court had

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1 *Suckling v R* [2016] NZCA 187, (2016) 27 NZTC 22-051 (French, Simon France and Ellis JJ) [*Suckling* (CA)].

2 *Suckling v R* [2016] NZSC 80, (2016) 27 NZTC 22-059 [*Suckling* (SC)].

jurisdiction to entertain a second application for leave.[3] In that case, after the original leave application was dismissed, further factual information, previously unknown to the appellant, had come to light on an issue that raised important questions concerning the administration of justice. The Court was prepared to grant leave on a second application in those circumstances.

[3] Mr Suckling seeks to take advantage of this very limited exception by arguing that his second application is based on fresh grounds not considered by the Court in its judgment on his first application. In his submissions, Mr Suckling says:

> The grounds raised in this appeal are either issues that the Court of Appeal avoided ruling upon even though they were placed before that court, or they are restatements of the actual issues placed before the Court of Appeal that never received proper consideration because they were not stated as specific grounds of appeal, or they are based on events that occurred subsequent to that appeal.

[4] This extract indicates why this second application for leave is misconceived. The first two sets of issues referred to in the extract indicate that Mr Suckling is seeking to re-run or re-cast arguments previously made and rejected. This is an abuse of the appellate process. Matters that could have been raised in his first application for leave to appeal should have been raised then and cannot be raised on a second application in a re-cast form. In relation to the third set of issues, Mr Suckling refers to events that occurred subsequent to the appeal before the Court of Appeal. However, no new factual matters capable of affecting the outcome have become apparent since this Court's earlier judgment, as occurred in *Saxmere*.

[5] Mr Suckling identifies seven grounds of appeal. Mr Suckling submits that:

(a) the admissibility hearing which he previously argued should have occurred after the trial should have occurred prior to trial;

(b) he did not have sufficient time to "frame a defence" after the Court gave what he describes as "interim answers" to his objections concerning the admissibility of evidence;

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[3] *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd* [2008] NZSC 94, (2008) 19 PRNZ 132 at [1]–[2].

(c) although he was informed of the trial process and his right to cross-examine witnesses, he was not told of his right to dispute the amount of tax owing at a disputed facts hearing prior to sentencing;

(d) the sentence imposed on him was unjust because there was no financial loss resulting from the offending;

(e) because the tax liabilities at issue were met by another party, imposing criminal liability on him means that there has been double taxation;

(f) it is unlawful to hold one party liable for the crimes of another; and

(g) one of the Crown's witnesses committed perjury at his trial, but he was not able to counter it because it took him by surprise.

[6] These are not new matters of a sort that would justify the Court taking the unusual step of granting a second application for leave to appeal. Rather, as just noted, they are matters that were, or could have been, raised in Mr Suckling's first application for leave to appeal. Further, they reveal both procedural and substantive misunderstandings on Mr Suckling's part. As the Court explained in its judgment on his first leave application, Mr Suckling rejected advice from Judge Atkins QC and Judge Lynch, both before and during his trial, that he should engage counsel. He preferred to act for himself.[4] Although Judge Atkins took steps to accommodate that, Mr Suckling must live with the consequences of his decision. In addition, it is clear that Mr Suckling misunderstood the relationship between the process for challenging a tax assessment and the process for prosecuting breaches of tax laws, and that this misunderstanding continues.[5]

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4 See *Suckling* (SC), above n 2, at [5]; and *Suckling* (CA), above n 1, at [17].
5 *Suckling* (SC), above n 2, at [3].

[7] There is nothing in the grounds identified which would justify granting a second application for leave. Accordingly, Mr Suckling's application is dismissed. As the Crown was not required to respond, there is no order for costs.

Solicitors:
Crown Law Office, Wellington for Respondent