

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 125/2019
[2020] NZSC 11

BETWEEN ROBERT MATTHEW URLICH
 Applicant

AND ATTORNEY-GENERAL
 Respondent

Court: Glazebrook, O'Regan and Ellen France JJ

Counsel: P M Hoskins for Applicant
 N C Anderson and N G Julian for Respondent

Judgment: 20 February 2020

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B There is no order as to costs.**
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REASONS

Introduction

[1] The applicant seeks leave to appeal directly to this Court from a decision of the Associate Judge determining that the applicant had not established a reasonably arguable case of a caveatable interest in a property.¹ Whether the case is reasonably arguable turns on whether the applicant is a “successor” to the original owner under the offer-back provisions of the Public Works Act 1981 (the Act).

¹ *Urlich v Attorney-General* [2019] NZHC 2783 (Associate Judge Andrew).

Background

[2] The way in which the issue arises is summarised by the Associate Judge as follows:

[1] The applicant, Robert Urlich, is of Ngāti Kahu descent. He seeks an order pursuant to s 143(4) of the Land Transfer Act 2017 (LTA) sustaining a caveat over ancestral whenua (land) on the Karikari Peninsula. The land is currently in Crown ownership. He says that he is beneficially entitled to the land because he is a successor of one of the original owners of the land under s 40(2) of the Public Works Act 1981 (PWA) and was entitled to have the land offered back to him under that legislation.

[2] The land at issue was originally owned by Robert's father, Simon Urlich, and his uncle, Richard Urlich. It was gifted to the Crown for a Māori school but is now surplus. It has been offered back to Zahn Urlich, the grandson of Richard. The Crown says it could not offer the land back to Robert because he only had a contingent right to his father's residual estate at the time of Simon's death. He is thus not a successor (unlike Zahn) under s 40(5) of the PWA.

[3] The Associate Judge found that the applicant was not a successor under the Act and therefore had not established a reasonably arguable case in support of a caveatable interest.² In reaching that conclusion the Associate Judge followed the judgment of the Court of Appeal in *Williams v Auckland Council* on the meaning of successor in s 40(5) of the Act and decided the applicant's case was on all fours with *Williams*.³

The proposed appeal

[4] The applicant wishes to argue that a broader interpretation of "successor" than that applied in *Williams* should be adopted. He also says that, unless a broader interpretation is applied, a substantial miscarriage of justice will occur in this case.⁴ In addition, it is submitted that there are exceptional circumstances which justify a direct appeal to this Court.⁵ The applicant relies first on the fact that the Court in an earlier leave judgment acknowledged there is an arguable point about the interpretation of "successor" in s 40(5) and accepted this "is potentially a point of

² At [31] and [55].

³ *Williams v Auckland Council* [2015] NZCA 479, (2015) 7 NZ ConvC ¶96-013.

⁴ Senior Courts Act 2016, s 74(2)(b).

⁵ Section 75(b).

public importance”.⁶ And, second, the applicant submits an appeal to the Court of Appeal would be a wasted exercise given that Court’s recent authority of *Williams*.

Assessment

[5] We are not satisfied that it is necessary in the interests of justice to hear the appeal on a “leapfrog” basis, nor that there are exceptional circumstances justifying a direct appeal. This is a case on which the Court should have the benefit of the views of the Court of Appeal.

[6] In that respect we note the applicant has foreshadowed that, if leave is granted, he would make an application for leave to adduce further evidence in this Court, namely:

- (a) Relevant tikanga evidence; and
- (b) Evidence regarding [his] personal, familial, and cultural ties to the subject property.

It would be better if this Court did not decide these matters as the court of first, and last, instance.

[7] We add that there is no urgency as the parties have agreed the caveat on the property remains in force pending the resolution of the appeal.

[8] The criteria for leave to appeal are not met. The application for leave to appeal is accordingly dismissed.

[9] Mr Urlich is legally aided. We make no order as to costs.

Solicitors:
Corban Revell, Auckland for Applicant
Crown Law Office, Wellington for Respondent

⁶ *Williams v Auckland Council* [2016] NZSC 20 at [16].