

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC UR 16/2020
[2020] NZSC 136

RE VINCENT ROSS SIEMER
Applicant

Counsel: Applicant in person

Judgment: 27 November 2020

JUDGMENT OF O'REGAN J

The applications for review of the decisions of the Deputy Registrar refusing to waive the filing fee are dismissed.

REASONS

[1] The applicant presented for filing a document headed “Notice of Appeal or Application for Leave in the Alternative”, seeking to challenge a judgment of the Court of Appeal. At the same time, he applied for a waiver of fees. (The filing fee is \$1,100.) The application for waiver was made under reg 5 of the Supreme Court Fees Regulations 2003. It was advanced on two bases:

- (a) That the applicant was unable to pay the fee.¹ The applicant says he is unable to pay the fee because he would suffer undue financial hardship if he paid the fee.²
- (b) That the appeal which he intends to commence concerns a matter of public interest and is unlikely to be commenced or continued unless the

¹ Supreme Court Fees Regulations 2003, reg 5(2)(a).

² Regulation 5(3)(b)(iii).

fee is waived.³ He says that this criterion is met because the intended appeal raises issues of significant interest to the public or to a substantial section of the public.⁴

[2] In a letter to the applicant dated 5 October 2020, the Deputy Registrar advised that she was unable to determine the application based on undue financial hardship because insufficient information had been provided. She asked him to provide further information. In relation to the significant interest to the public ground, she was not satisfied that this criterion was met and refused to waive fees on this ground. She said the challenge to the judgment of the Court of Appeal in this Court would not determine a question of law that was of significant interest to the public or a substantial section of the public. Rather, the Court of Appeal judgment involved a straightforward decision to strike out the appeal and no question of law of significant interest to the public arose.

[3] On 21 October 2020, the applicant provided further information in support of the undue financial hardship ground.

[4] In a letter to the applicant dated 27 October 2020, the Deputy Registrar advised that, on the information provided by the applicant, she was not satisfied that the undue financial hardship ground was made out. She therefore declined a fee waiver on that ground.

[5] On 19 October 2020, the applicant applied for a review of the Deputy Registrar's refusal of a fee waiver on the public interest ground.

[6] On 23 November 2020, the applicant applied for a review of the Deputy Registrar's refusal of a fee waiver on the undue financial hardship ground.

[7] These applications for review have been referred to me for decision. I will deal with the public interest ground first.

³ Regulation 5(2)(b).

⁴ Regulation 5(4)(b)(i).

Public interest ground

[8] The Court of Appeal exercised the power given by r 44A(1)(c) of the Court of Appeal (Civil) Rules 2005 to strike out the applicant’s appeal to that Court.⁵ The intended appeal was against a minute issued by the High Court. The Court of Appeal considered the minute did not contain any decision or determination.⁶ Accordingly, the Court concluded there was no “judgment decree or order” that could be the foundation of an appeal under s 56(1)(a) of the Senior Courts Act 2016.⁷

[9] The applicant in his submissions in support of the review argues that there are a number of public interest grounds of concern, but he does not confront the Court of Appeal’s conclusion that the minute against which he wished to appeal was not a judgment order or decree, and therefore did not give rise to a right of appeal.⁸ The points the applicant wishes to argue arise only because of his choice to seek to appeal against a minute that made no decision against him. It is unlikely that this situation will arise again for the obvious reason that most litigants will be alert to the fact that no right of appeal arises where no decision is made against them. Accordingly, I agree with the Deputy Registrar that no question of law that is of significant interest to the public or to a substantial section of the public would be engaged in any appeal to this Court against the Court of Appeal decision.

[10] I therefore uphold the decision of the Deputy Registrar in relation to the public interest ground.

Undue financial hardship ground

[11] Regulation 5(3) of the Supreme Court Fees Regulations provides as follows:

- (3) For the purposes of these regulations, an applicant is unable to pay the fee sought to be waived if—
 - (a) the applicant has been granted legal aid in respect of the matter for which the fee is payable; or

⁵ *Re Siemer* [2020] NZCA 393 at [28] (Miller, Brown and Gilbert JJ).

⁶ At [21].

⁷ At [26].

⁸ Even if it had been a decision, it would have been in the applicant’s favour, and therefore not amenable to appeal by the applicant: *Arbuthnot v Chief Executive of the Department of Work and Income* [2007] NZSC 55, [2008] 1 NZLR 13 at [25].

- (b) the applicant has not been granted legal aid in respect of the matter for which the fee is payable and the applicant—
 - (i) is dependent for the payment of his or her living expenses on a specified benefit (as defined in section 198(3) of the Social Security Act 2018) that is jobseeker support, sole parent support, a supported living payment, or an emergency benefit; or
 - (ii) is wholly dependent for the payment of his or her living expenses on New Zealand superannuation under the New Zealand Superannuation and Retirement Income Act 2001 or a veteran’s pension under the Veterans’ Support Act 2014; or
 - (iii) would otherwise suffer undue financial hardship if he or she paid the fee.

[12] The applicant relied on the undue financial hardship ground because none of the other grounds apply to him. In the application form, he set out his income and the balance in a bank account, specified two properties in the United States in which he has an interest, listed two outstanding debts and set out his total weekly expenses. He did not submit any supporting evidence of these matters.

[13] In response to the Deputy Registrar’s request for further information, he submitted a screenshot relating to a bank account that showed a single transaction over a three-month period and information about rent received from a property in the United States.

[14] A decision maker in relation to a fee waiver application based on the undue financial hardship ground has to be satisfied that paying the fee will cause not only financial hardship, but “undue” financial hardship to the applicant. This is a question of fact. Only an applicant has the necessary information to establish this and so the applicant must provide the information to the decision maker that demonstrates that undue financial hardship will follow if the fee is paid, unless that information has been provided previously and remains current. It is not for the decision maker to prise the information from the applicant. The Deputy Registrar did seek further information in this case, but the information provided by the applicant did not satisfy her that the undue financial hardship ground was made out.

[15] I have considered the application form and the information provided by the applicant in response to the Deputy Registrar's request. Like her, I am not satisfied that the statements made in the application form and the information subsequently provided demonstrates that the undue financial hardship ground has been made out. I therefore uphold her decision to refuse the fee waiver on this ground.

Result

[16] The applications for review are dismissed.