

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 82/2021
[2021] NZSC 123

BETWEEN BENJAMIN MORLAND EASTON
Applicant

AND REGISTRAR OF THE HIGH COURT OF
NEW ZEALAND
Respondent

Court: William Young, Ellen France and Williams JJ

Counsel: Applicant in person
D L Harris and T Li for Respondent

Judgment: 22 September 2021

JUDGMENT OF THE COURT

- A The application for an extension of time to apply for leave to appeal is granted.**
- B The application for leave to appeal is dismissed.**
- C The applicant must pay the respondent costs of \$2,500.**
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REASONS

Introduction

[1] The applicant seeks leave to appeal directly to this Court from a decision of the High Court.¹ The Court dismissed his application for review of the decision of the Registrar of the High Court not to waive a filing fee in relation to a judicial review application.

¹ *Easton v Registrar of the High Court of New Zealand* [2021] NZHC 1347 (Cull J) [HC judgment].

Background

[2] The applicant was convicted after trial of two road transport infringement offences, one of which was that, being in charge of a vehicle, he parked on a road on a flush median or traffic island.² He appealed unsuccessfully against conviction to the High Court.³ The applicant then filed judicial review proceedings seeking to challenge the decision to dismiss his appeal. The Registrar declined to waive the filing fee for these proceedings. The applicant sought a review of that decision. That application was dismissed by Cull J.⁴

[3] In dismissing the application for review of the Registrar’s decision, Cull J considered the application did not meet the criteria for fee waiver, namely, genuine public interest.⁵ The Judge noted the applicant argued the public interest test was met because the proceeding concerned “operational bias”, was brought in order to educate the public, and raised issues advanced in the appeal about the status of He Whakaputanga o te Rangatiratanga o Nu Tirene 1835 | the Declaration of Independence of the United Tribes of New Zealand 1835.⁶ The Judge considered the proposed arguments were directed “largely” to the substantive appeal against conviction dismissed by Ellis J and were an attempt to relitigate that decision.⁷ The judicial review application was not the right legal forum for consideration of matters the applicant wished to raise.

The proposed appeal

[4] In support of the argument that Cull J erred in dismissing the application for a fee waiver, the applicant raises a number of matters which were considered in his earlier appeal against conviction, for example, the failure to provide him with a transcript of the hearing before the District Court and whether the place where the

² *Wellington City Council v Easton* [2020] NZDC 12300 (Judge Large).

³ *Easton v Wellington City Council* [2020] NZHC 3351 (Ellis J).

⁴ HC judgment, above n 1.

⁵ Regulation 20(a) of the High Court Fees Regulations 2013 defines public interest as, relevantly, a proceeding that will determine a question of law “of significant interest to the public or to a substantial section of the public”.

⁶ HC judgment, above n 1, at [8].

⁷ At [11]. The Judge also did not accept Mr Easton’s argument that the Registrar’s decision was part of a pattern of corruption or that the Letters Patent Constituting the Office of the Governor-General of New Zealand 1983 (the Letters Patent) assisted the argument: at [13]–[15].

motor vehicle was parked fitted within the definition of a “traffic island”. He also says that there are exceptional circumstances justifying a direct appeal to this Court as required by s 75 of the Senior Courts Act 2016. In this respect, he argues, amongst other things, that his proposed appeal raises constitutional questions about the status of the Declaration of Independence and Crown sovereignty,⁸ and issues of alleged bias and corruption.⁹ The applicant argues this Court is most suited to determine these questions.

[5] In opposing leave, the respondent submits that the decision to decline the fee waiver review was correct and, in any event, there is no jurisdiction to seek judicial review of the earlier decision of the High Court to dismiss the conviction appeal.

Our assessment

[6] Nothing raised by the applicant calls into question the assessment made by Cull J that the criteria for fee waiver were not met. Putting to one side the question of jurisdiction raised by the respondent, there can be no realistic challenge to the conclusion that the proceeding would not raise any matter of genuine public interest. We also do not consider the proposed appeal raises any question of general or public importance,¹⁰ nor is there any appearance of a miscarriage of justice.¹¹ Accordingly, the test for exceptional circumstances justifying a direct appeal is also not met.¹²

[7] The application for leave to appeal was filed out of time. The delay is explained and the respondent accepts the minimal delay has not caused any prejudice. Accordingly, the application for an extension of time to apply for leave to appeal is granted. The application for leave to appeal is dismissed.

⁸ The applicant notes the Court of Appeal’s consideration of the status of the Declaration of Independence in *Ngaronoa v Attorney-General* [2017] NZCA 351, [2017] 3 NZLR 643 (a decision relied on by Ellis J in the conviction appeal).

⁹ For example, the approach to the transcript and the treatment of an affidavit is said to demonstrate bias. The applicant also takes issue with Cull J’s interpretation of the Letters Patent.

¹⁰ While significant issues relating to the Treaty of Waitangi constitute matters of general or public importance, we do not consider the applicant’s proposed appeal raises such questions: Senior Courts Act 2016, s 74(2)(a) and (3).

¹¹ Section 74(2)(b). See *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369.

¹² Section 75.

[8] The applicant also sought a return of the filing fee in this Court on the basis of the significance of the matters raised by the proposed appeal. Regulation 8 of the Supreme Court Fees Regulations 2003 provides for the registrar, on application, to refund a fee that has already been paid if the criteria in the regulation are met. The applicant could make an application to the registrar if he wished to pursue this matter albeit on the material before us it seems the criteria in reg 8 would not be satisfied.

[9] The applicant must pay the respondent costs of \$2,500.

Solicitors:
Crown Law Office, Wellington for Respondent