

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 63/2024  
[2024] NZSC 122

BETWEEN FRANCISC CATALIN DELIU  
Applicant

AND AUCKLAND DISTRICT COURT  
First Respondent

NEW ZEALAND POLICE  
Second Respondent

ATTORNEY-GENERAL  
Third Respondent

Court: Glazebrook, Kós and Miller JJ

Counsel: Applicant in person  
P J Gunn for First Respondent  
No appearance for Second Respondent  
J E L Carruthers for Third Respondent

Judgment: 25 September 2024

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**JUDGMENT OF THE COURT**

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- A The application for leave to appeal is dismissed.**
- B The applicant must pay the third respondent costs of \$2,500.**
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**REASONS**

[1] The applicant, Mr Deliu, was formerly in legal practice in New Zealand. In February 2017, he was charged with two charges of assault with a weapon. He pleaded not guilty and elected trial by jury. In early 2018 he left the jurisdiction.

In April 2021, Judge Paul adjourned the proceedings until Mr Deliu answered warrants issued for his arrest.<sup>1</sup>

[2] Mr Deliu then applied to judicially review Judge Paul’s direction and certain other procedural rulings made by the District Court in the course of the criminal proceedings. He sought remedies, including declarations that his rights to be tried without undue delay and to natural justice had been breached. These proceedings were heard and dismissed by Harvey J, save in respect of one ground which related to whether an involvement hearing under s 9 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 could proceed in Mr Deliu’s absence. Despite the error identified, the Judge declined to grant relief.<sup>2</sup>

[3] On appeal, the Court of Appeal held that Judge Paul had erred in adjourning Mr Deliu’s criminal proceedings indefinitely and the High Court had erred in finding otherwise.<sup>3</sup> The Court of Appeal therefore quashed Judge Paul’s ruling and remitted the criminal proceedings to the District Court for reconsideration. Recall of the judgment was sought by Mr Deliu, but declined, with costs ordered.<sup>4</sup>

[4] Mr Deliu now seeks leave to appeal in part the Court of Appeal’s substantive judgment, together with the costs order made in the recall judgment. We record that subsequently the criminal proceedings against Mr Deliu were stayed by the Deputy Solicitor-General (Criminal).

### **The proposed appeal**

[5] Mr Deliu wishes to contend that the Court of Appeal erred at [47] of its substantive judgment “in that the issue was not whether the trial court had not addressed all of my arguments”, but rather that “it had failed to adjudicate a number of my causes of action which is a natural justice right”.<sup>5</sup> He also seeks to argue that the decision cited by the Court does not stand for the proposition that a Judge is not

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<sup>1</sup> *R v Deliu* DC Auckland CRI-2018-004-003571, 20 April 2021.

<sup>2</sup> *Deliu v Auckland District Court* [2023] NZHC 164.

<sup>3</sup> *Deliu v Auckland District Court* [2024] NZCA 39 (Wylie, Mander and Muir JJ) [CA judgment].

<sup>4</sup> *Deliu v Auckland District Court* [2024] NZCA 257 (Wylie, Mander and Muir JJ) [CA recall judgment].

<sup>5</sup> CA judgment, above n 3.

required to deal with each and every argument put forward by an applicant in support of his or her position, and so the Court erred in law.<sup>6</sup>

[6] Mr Deliu further seeks to contend that the costs order made in the recall judgment was in breach of natural justice or ultra vires inasmuch as the third respondent had not sought costs.<sup>7</sup>

### **Our approach**

[7] The criteria for leave are not made out by these arguments. We consider the proposed appeal raises no matter of general or public importance, but rather relates to the particular circumstances of Mr Deliu's case.<sup>8</sup> While the authority cited by the Court below for the proposition that a Judge is not required to deal with each and every argument put forward by an applicant in support of his or her position was inapposite, the point is a well-established one of long-standing, and needs no further consideration by this Court.<sup>9</sup> So too is the exposure of an applicant for recall to costs, regardless of application by the respondent. On such applications, costs lie in the discretion of the Court of Appeal, subject to rr 53 and 53A of the Court of Appeal (Civil) Rules 2005. We see no apparent error by the Court of Appeal in applying these principles, so there is no relevant risk of a miscarriage of justice as that term applies in a civil context.<sup>10</sup>

### **Result**

[8] The application for leave to appeal is dismissed.

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<sup>6</sup> See *Bolton Metropolitan District Council v Secretary of State for the Environment* [1995] 1 WLR 1176 (HL) as cited in CA judgment, above n 3, at [47], n 49.

<sup>7</sup> See CA recall judgment, above n 4, at [10] and [12].

<sup>8</sup> Senior Courts Act 2016, s 74(2)(a).

<sup>9</sup> See *Ross v Henderson* [1977] 2 NZLR 458 (PC) at 463; *R v Nakhla (No 2)* [1974] 1 NZLR 453 (CA) at 456 citing *Hardwick Game Farm v Suffolk Agricultural Poultry Producers Assn Ltd* [1966] 1 WLR 287 (CA) at 329 per Diplock LJ; *Stockman v Health and Disability Commissioner* [2020] NZCA 588 at [14]; *Orlov v New Zealand Lawyers and Conveyancers Disciplinary Tribunal* [2016] NZCA 633 at [55]; and *Attorney-General v Slavich* [2013] NZHC 627 at [101].

<sup>10</sup> Senior Courts Act, s 74(2)(b); and see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

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

Solicitors:

Te Tari Ture o te Karauna | Crown Law Office, Wellington for First and Third Respondents