

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 34/2024
[2024] NZSC 147

BETWEEN FRANCISC CATALIN DELIU
Applicant

AND ATTORNEY-GENERAL
First Respondent

AND NEW ZEALAND POLICE
Second Respondent

Court: Ellen France, Kós and Miller JJ

Counsel: Applicant in person
T G H Smith for Respondents

Judgment: 1 November 2024

JUDGMENT OF THE COURT

- A The interlocutory applications addressed in this Court's minute of 2 July 2024 are dismissed.**
- B The application for recall of this Court's minute of 29 August 2024 is dismissed.**
- C The application for leave to appeal is dismissed.**
- D The applicant must pay the respondents one set of costs of \$2,500.**
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REASONS

[1] This judgment responds to Mr Deliu’s application for leave to appeal a decision of the Court of Appeal and his application to recall this Court’s minute of 29 August 2024.¹

[2] We also give reasons for the orders contemplated by this Court’s minute of 2 July 2024 (as we indicated we would do in that minute).²

[3] The judgment which is the subject of the application for leave to appeal is a decision ordering that Mr Deliu pay security for costs in an appeal against two judgments of Brewer J.³ One declined judicial review of certain decisions made by the New Zealand Police | Ngā Pirihimana o Aotearoa and the Crown Solicitor in connection with a pending prosecution of Mr Deliu.⁴ The other awarded increased costs against Mr Deliu.⁵

[4] The Deputy Registrar of the Court of Appeal had waived security on the grounds that Mr Deliu appeared to be impecunious and the appeal was one which a reasonable and solvent litigant might pursue.⁶ On review, Ellis and Wylie JJ came to a different view on the latter question and accordingly declined to waive security.⁷

[5] In the minute of 2 July we said we would dismiss a number of interlocutory applications made by Mr Deliu, which sought leave to file further evidence, discovery against the Attorney-General in connection with the appointment of Wylie J to the Court of Appeal, amendments to the timetable for submissions and to page limits, an oral leave hearing, and leave to file submissions in reply.⁸ We noted in that minute

¹ *Deliu v Attorney-General* [2024] NZCA 93 (Ellis and Wylie JJ) [CA judgment]; and *Deliu v Attorney-General* SC 34/2024, 29 August 2024 [SC August minute].

² *Deliu v Attorney-General* SC 34/2024, 2 July 2024 [SC July minute] at [6].

³ CA judgment, above n 1. The Court of Appeal ordered that security be paid in CA197/2023, which was to be heard together with the related appeal in CA553/2023 (in which the parties agreed security for costs should be dispensed with).

⁴ *Deliu v Attorney-General* [2023] NZHC 512.

⁵ *Deliu v Attorney-General* [2023] NZHC 2375.

⁶ CA judgment, above n 1, at [10]–[12].

⁷ At [37]–[42].

⁸ SC July minute, above n 2, at [2]–[3] and [6].

that the Court of Appeal had not stayed Mr Deliu's appeal pending payment and the appeal was set down for 6 August 2024.⁹

[6] In the minute of 29 August we allowed Mr Deliu to file submissions in reply confined to the implications for the proposed appeal of the Crown's decision to stay the criminal proceedings.¹⁰ The minute was issued in response to his application for further interlocutory orders following that decision. We recorded that his substantive appeal had been argued in the Court of Appeal and judgment was pending.¹¹ We declined to defer a judgment on the leave application until after the Court of Appeal delivers its judgment in that appeal.¹²

[7] It is convenient to give our reasons for the 2 July 2024 decision first. It was neither necessary nor appropriate to file further evidence about the judgment. It stands or falls on the reasons given in it. The proposed evidence was nothing more than a collection of papers relating to, and filed in, various proceedings. The claim that there was no lawful coram in the Court of Appeal has no prospect of success. The timing and page limits for submissions on leave applications exist for good reason; it should be possible to point concisely to an issue that merits leave. This case is no exception. There was no need for an oral leave hearing or for Mr Deliu to file submissions in reply.

[8] We next deal with the recall application. Mr Deliu has pointed out that the appeal heard on 6 August concerned a different proceeding, CA316/2023, in which security was dispensed with. He is correct that in the minute of 29 August we understood that the present case on appeal, CA197/2023,¹³ was heard at the same time, without him having to pay security before the hearing. That was our understanding when we issued the minute of 2 July. It now appears that the fixture in CA197/2023 was vacated that same day. We accept that this means the application for leave to appeal the decision to order security in CA197/2023 should be assessed on the basis

⁹ At [4]–[5].

¹⁰ SC August minute, above n 1, at [4].

¹¹ At [2].

¹² At [5].

¹³ See above n 3.

that the substantive appeal may not proceed in the Court of Appeal if Mr Deliu is required to pay security.

[9] As explained in the minute of 29 August, Mr Deliu invited us to defer a decision on the application for leave to appeal pending the substantive decision in CA316/2023.¹⁴ We declined to do so. In his recall application he says that not only was security waived in CA316/2023, but also that it raises what he describes as the same *R v Hansen* issue as does CA197/2023.¹⁵ Thus, he says, there is a risk of inconsistent decisions.

[10] We decline to further delay a decision on this leave application. If Mr Deliu should succeed in his substantive appeal in CA316/2023, he may ask the Court of Appeal to revisit its decision on security in CA197/2023. The explanation for inconsistent decisions in the Court of Appeal appears to be that the Deputy Registrar waived security in both appeals but in only one of them was an application made to review the waiver. So there is no apparent inconsistency. Rather, it appears that Mr Deliu may count himself fortunate that security was not ordered in CA316/2023. The only question for us is whether the decision to order security in CA197/2023 raises an issue meeting the criteria for leave to appeal an interlocutory decision of the Court of Appeal.¹⁶

[11] Turning to the merits of that application, we observe that this is not the first attempt to appeal decisions of the Court of Appeal declining to waive security in related proceedings brought by Mr Deliu.¹⁷ In one case, this Court observed that the proposed appeal turned on its particular facts.¹⁸ The Court also agreed with the Court of Appeal that one reason for ordering security was that Mr Deliu was challenging processes in a repeated way.¹⁹ This Court found it unsurprising that the Court of Appeal should think that the respondent ought to have the protection of

¹⁴ SC August minute, above n 1, at [5].

¹⁵ *R v Hansen* [2007] NZSC 7, [2007] 3 NZLR 1.

¹⁶ Senior Courts Act 2016, s 74(4).

¹⁷ See *Deliu v Attorney-General* [2024] NZSC 108; and *Deliu v Solicitor-General* [2024] NZSC 81.

¹⁸ *Deliu v Attorney-General*, above n 17, at [10]. For this reason there was said to be no question of general or public importance.

¹⁹ At [11].

security. We take the same view in this case. There is no appearance of a miscarriage of justice.²⁰

[12] In the circumstances it is not necessary to deal with the Crown's argument that the proposed appeal is now moot given the criminal proceedings were stayed by the Deputy Solicitor-General on 18 July 2024.

Result

[13] The interlocutory applications addressed in this Court's minute of 2 July 2024 are dismissed.

[14] The application for recall of this Court's minute of 29 August 2024 is dismissed.

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

[16] The applicant must pay the respondents one set of costs of \$2,500.

Solicitors:

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

²⁰ Senior Courts Act, s 74(2)(b). For the meaning of that term in a civil context, see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].