

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 23/2024
[2024] NZSC 81

BETWEEN FRANCISC CATALIN DELIU
Applicant

AND SOLICITOR-GENERAL
Respondent

Court: Glazebrook, Kós and Miller JJ

Counsel: Applicant in person
D L Harris for Respondent

Judgment: 26 July 2024

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant must pay the respondent costs of \$2,500.

REASONS

[1] The present application stems from proceedings brought by the applicant, Mr Deliu, against the Solicitor-General in the wake of his being charged with assault with a weapon and attempting to pervert the course of justice, in 2017 and 2018 respectively.¹

[2] The applicant sought judicial review of Crown Law's decision to reject a complaint against the then-Auckland Crown Solicitor and one of his partners. That application failed before Harvey J in the High Court.² An appeal to the Court of Appeal was filed, alleging inter alia that the High Court had breached his

¹ See *Deliu v Flanagan* [2022] NZHC 2621 (Davison J) at [15] and [19].

² *Deliu v Solicitor-General* [2023] NZHC 2769 [HC judgment].

right to judicial review under s 27(2) of the New Zealand Bill of Rights Act 1990 (NZBORA). That appeal is yet to be determined. A Deputy Registrar declined to dispense with security for costs, which was then set in the usual amount of \$7,060. That decision was confirmed on review by Gilbert J.³ The applicant now seeks leave to appeal the review decision of Gilbert J.

[3] In line with this Court’s judgment in *Reekie v Attorney-General*,⁴ the decision on review was based principally on whether a reasonable and solvent litigant in the applicant’s position would pursue the appeal,⁵ it having been accepted that he was impecunious.⁶ The Judge concluded that such a litigant would not bring the appeal. The benefit sought by the applicant—an increase in the probability of his charges being dropped if the complaint against the Crown Solicitor were upheld—was “vanishingly small and plainly outweighed by the likely cost”.⁷ The appeal itself “face[d] serious challenges and ha[d] little chance of succeeding”, and the Judge considered the respondent should not be required to defend it without the usual protection of security for costs.⁸

[4] In reaching that decision, the Judge agreed with the Deputy Registrar’s findings that costs were likely to be ordered in the usual way in the applicant’s appeal;⁹ the costs outweighed the likely benefits of the appeal;¹⁰ and the appeal lacked apparent merit.¹¹

The present application

[5] The applicant’s proposed grounds of appeal are that Gilbert J failed to give reasons on the merits of the appeal and that the applicant is unable to pay, so that his appeal will be deemed abandoned by operation of law without a determination of the merits if security for costs is required. In relation to the former ground, he invites this

³ *Deliu v Solicitor-General* [2024] NZCA 37 [CA judgment].

⁴ *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737 at [35].

⁵ CA judgment, above n 3, at [12].

⁶ At [2].

⁷ At [11]–[12].

⁸ At [14]–[15].

⁹ At [10].

¹⁰ At [12].

¹¹ At [14].

Court to consider “whether the time has finally come to make the giving of reasons a requirement in law”, submitting that this is a question of general or public importance. On the latter ground, he submits there is a risk of a substantial miscarriage of justice if he is required to pay security for costs, emphasising that his substantive appeal concerns an alleged breach by the High Court of his NZBORA right to judicial review.¹²

[6] The respondent submits the proposed appeal raises no matter of general or public importance and there is no risk of a substantial miscarriage of justice. The Deputy Registrar’s detailed decision was before the Judge and was referred to in the review decision. The Judge also referred explicitly to the applicant’s submissions and expressed his own conclusions on the issues raised. Reasons were given supporting the Judge’s decision and there was no evident error in those reasons. Where the Judge indicated agreement with the Deputy Registrar, his decision on review was “effectively underpinned by the earlier decision”.

Our assessment

[7] The proposed appeal raises no matter of general or public importance.¹³ It may be noted that in the case of leave to appeal, the Senior Courts Act 2016 and the Court of Appeal (Civil) Rules 2005 both require the Court of Appeal to give reasons which may be stated “briefly and in general terms only”.¹⁴ By parity of reasoning, no more could be required in the case of review of a registrar’s decision concerning security for costs. Explicitly in such a case, the Judge was entitled to “confirm, modify, or revoke [the Deputy Registrar’s] decision as the Judge thinks fit.”¹⁵

[8] Nor is there any risk of a substantial miscarriage of justice (as that expression is used in a civil context).¹⁶ There is no evident error in the Judge’s decision on review. Although the assessment of the merits was brief, the Deputy Registrar’s detailed

¹² New Zealand Bill of Rights Act 1990, s 27(2).

¹³ Senior Courts Act 2016, s 74(2)(a).

¹⁴ Senior Courts Act, ss 61(2) and (3); and Court of Appeal (Civil) Rules 2005, r 27(3).

¹⁵ Senior Courts Act, s 49(6)(b).

¹⁶ Section 74(2)(b); and see *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

assessment was before the Judge, as were the applicant's submissions. The fact that the review must be undertaken de novo does not preclude the Judge from agreeing with a registrar's findings, as was the case here. As the Deputy Registrar noted, even if the applicant were correct that Harvey J's deference to Crown Law was wrong, the result would be the same because notwithstanding his conclusion that deference was appropriate, the High Court Judge considered and disposed of the issue raised by the applicant anyway, "out of an abundance of caution".¹⁷

[9] It follows that it is not necessary in the interests of justice for the Court to hear and determine the proposed appeal.¹⁸

Result

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

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

Solicitors:
Crown Law Office | Te Tari Ture o te Karauna, Wellington for Respondent

¹⁷ HC judgment, above n 2, at [66].

¹⁸ Senior Courts Act, s 74(1).