

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 53/2024
[2024] NZSC 93

BETWEEN MARK ANTHONY WHITTINGTON
Applicant

AND SOLICITOR-GENERAL
Respondent

Court: Glazebrook, Ellen France and Kós JJ

Counsel: Applicant in person
I M G Clarke for Respondent

Judgment: 5 August 2024

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B There is no order as to costs.

REASONS

Introduction

[1] Mr Whittington seeks leave to appeal to this Court against a judgment of the High Court of 23 May 2024.¹

Background

[2] Mr Whittington's mother died in September 2019. The death certificate recorded carcinoma of the bladder as the underlying cause of death, chronic kidney disease as the antecedent cause of death and myocardial infarction as the disease or

¹ *Whittington v Solicitor-General* [2024] NZHC 1314 (Palmer J).

condition directly leading to death. The doctor who signed the death certificate said he was satisfied that Ms Whittington's death did not need to be reported to the coroner and he did not request a post-mortem.²

[3] Mr Whittington sincerely believes that the causes of death recorded in the certificate were false and that his mother's death was caused by medical neglect and criminal actions. In April 2020, he asked the Solicitor-General to order a coronial inquiry into her death. That request was refused by the Acting Deputy Solicitor-General by letter of 6 November 2020. Mr Whittington raised some further issues about the cause of his mother's death. On 7 December 2020, the Deputy Solicitor-General confirmed the decision not to order a coronial inquiry.³

The High Court decision

[4] Mr Whittington applied for judicial review on the basis that the decisions were pre-determined, that they breached the duty of investigation under s 8 of the New Zealand Bill of Rights Act 1990 and that there was sufficient evidence to support the claim for an inquest.⁴

[5] The matter was heard on 19 February 2024. After the hearing Mr Whittington sought to file further material. Palmer J reviewed that material but considered that it did not advance Mr Whittington's case.⁵

[6] The High Court held that the evidence before the Court did not support the existence of an error in the decisions not to order a coronial inquiry.⁶ Nor did the evidence support the conclusion that the cause of death was suspicious and incorrectly recorded on the death certificate.⁷ It was held further that the duty of investigation was met, first by the doctor who signed the death certificate and by the review of the available information by the delegates of the Solicitor-General.⁸ The Court concluded

² At [1].

³ At [4]–[6].

⁴ At [7].

⁵ At [8].

⁶ At [10].

⁷ At [12].

⁸ At [11].

that the decisions were open to the decision-makers and were lawful, reasonable and valid.⁹ The application for judicial review was declined.

Ground of proposed appeal

[7] Mr Whittington seeks to challenge the decision of the High Court on essentially the same grounds he raised in that Court. He also raises some process issues related to the High Court hearing.

Our assessment

[8] The matters Mr Whittington seeks to raise relate to the particular factual circumstances of his case. No issues of general or public importance arise.¹⁰

[9] Nothing raised by Mr Whittington suggests that the High Court decision may have been wrong or that the process in the High Court was unfair. There is thus no risk of a miscarriage of justice as that term applies in the civil context.¹¹

[10] In addition, there are no exceptional circumstances justifying a direct appeal to this Court from the High Court.¹²

Costs

[11] No costs were sought or awarded in the High Court. Mr Whittington is a litigant in person and a grieving son who is genuinely concerned about the circumstances of his mother's death. His application to this Court was on essentially the same grounds as in the High Court and therefore there would not have been much further work involved for the Solicitor-General to prepare the submissions to this Court over and above that already undertaken for the High Court. In all of these circumstances we do not propose to make a costs award.

⁹ At [14].

¹⁰ Senior Courts Act 2016, s 74(2)(a).

¹¹ Section 74(2)(b); and *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

¹² Section 75.

Result

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

[13] There is no order as to costs.

Solicitors:

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