IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 26/2024
[2024] NZSC 98

BETWEEN	ALLAN GEOFFREY HALSE Applicant
AND	EMPLOYMENT COURT OF NEW ZEALAND First Respondent
	THE EMPLOYMENT RELATIONS AUTHORITY Second Respondent
	RANGIURA TRUST BOARD Third Respondent

Court: Glazebrook, Ellen France and Kós JJ

Counsel: S M Henderson for Applicant
D Jones and A J Vincent for First Respondent
A P Lawson for Second Respondent
S W Hood for Third Respondent

Judgment: 12 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] The applicant, Mr Halse, seeks leave to appeal to this Court from a decision of

Goddard J in the Court of Appeal.[1] The decision declined an interlocutory application for recission of existing directions and the vacation of a fixture.

Background

[2] The current application for leave has its genesis in a decision of the Employment Court delivered on 13 September 2022.[2] The Court struck out the applicant's application for judicial review of a number of decisions made by the Employment Relations Authority. The decisions of the Authority were made in the context of an ongoing dispute between the applicant and the Rangiura Trust Board.[3]

[3] The applicant applied to the Court of Appeal under s 213 of the Employment Relations Act 2000 for judicial review of the Employment Court strike-out decision. Case management directions were made in relation to this application. In particular, a hearing was set down in the Miscellaneous Motions list on 18 March 2024 for the Court of Appeal to address whether it could strike out the applicant's application for judicial review to the Court of Appeal on its own motion, and if so, whether the Court should do so. Counsel was appointed to assist the Court because the respondents otherwise abided.

[4] The applicant then filed the interlocutory application seeking recission of the case management directions and vacation of the fixture which is the subject of the present application. As we have said, that application was declined and the matter proceeded to a hearing.

[5] However, as the Court of Appeal noted in its judgment delivered on 17 June 2024, it turned out that there was a prior issue.[4] The Court referred in this context to a decision of the High Court under s 166(4) of the Senior Courts Act 2016 restraining the applicant from commencing or continuing civil proceedings on the matter before the Judge or any related matter in any senior court, another court, or

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1 *Halse v Employment Court of New Zealand* CA253/2023, 5 March 2024 [CA interlocutory decision].
2 *Halse v Employment Relations Authority* [2022] NZEmpC 167, [2022] ERNZ 808 (Judge Smith).
3 Rangiura Trust Board is the registered name of the charity.
4 *Halse v Employment Court of New Zealand* [2024] NZCA 232 (Cooper P and Ellis J).

tribunal.[5] The Court of Appeal received submissions from the applicant on the effect of the High Court decision. Ultimately, the Court of Appeal accepted that the proceeding before it was a related proceeding within the terms of the High Court judgment. That meant the applicant needed to obtain leave of the High Court to pursue the application for judicial review in the Court of Appeal.

[6] The Court of Appeal accordingly stayed the proceeding before it, pending either the grant of leave to continue the proceedings under s 169 of the Senior Courts Act or the expiry or setting aside of the s 166(4) order made by the High Court.

The proposed appeal

[7] The applicant says his interlocutory application was wrongly declined without the Court hearing from him. He argues that this was a breach of the Court of Appeal (Civil) Rules 2005. Further, he submits that by not enforcing the requirement in s 10(1) of the Judicial Review Procedure Act 2016 that a respondent must file a statement of defence, the Court of Appeal has breached his constitutional rights. Finally, he argues case management cannot prevail over natural justice rights as he maintains has occurred here.

Our assessment

[8] If the Court of Appeal decision staying the proceeding is correct, there would be a question as to our jurisdiction to hear the proposed appeal. We gave the applicant the opportunity to make submissions on the impact of the Court of Appeal decision, which he did. However, having considered the matters raised in those submissions, our view is that it is not appropriate for us to seek to resolve that question in this case.[6] Nor do we need to do so. That is because it is quite plain that the leave criteria are not met as we now explain.

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5 At [3] citing *[H] v [RPW]* [2023] NZHC 1519 (Moore J) at [118].

6 The applicant has filed an application for leave to this Court challenging the decision of the Court of Appeal upholding the s 166(4) order.

[9] The decision that the matter should proceed to the fixture date raises no question of general or public importance.[7] The Court's approach was orthodox. The relevant excerpt from the decision is as follows:[8]

> [2] At the hearing on 18 March 2024 the Court will consider whether this Court has jurisdiction to strike out the application for judicial review filed by Mr Halse in this Court. It will also consider whether, if such jurisdiction exists, it should be exercised. The directions given by Justice Miller on 9 October 2023 do not pre-empt any of those questions, which can only be determined by an appropriately constituted panel of judges.
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> [3] All the grounds on which Mr Halse seeks to have the directions given on 9 October 2023 rescinded, and the hearing vacated, can be raised in the context of that hearing in support of the argument that this Court cannot and/or should not make an order striking out Mr Halse's application for judicial review. If any of the grounds numbered 1-3 in the interlocutory application are made out, that would be a conclusive reason not to strike out Mr Halse's judicial review application. But none of this is a reason not to proceed with a hearing to consider whether or not to do so.
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> [4] I agree with the submission made by counsel to assist in her memorandum dated 4 March 2024 that in these circumstances, the interlocutory application is misconceived. It serves no useful purpose. Rather, the focus should be on the argument scheduled for 18 March 2024.

[10] Nothing raised by the applicant calls into question the decision that the matters he wanted to address could be dealt with at the hearing. No question of an appearance of a miscarriage of justice, as that term is used in the civil context, accordingly arises.[9] Nor is it in the interests of justice to hear the proposed appeal which, as our description of the background indicates, has in any event been overtaken by subsequent events.[10]

[11] We add that we see no reason to hold a hearing on the application for leave.

Result

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

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7 Senior Courts Act 2016, s 74(2)(a).
8 CA interlocutory decision, above n 1.
9 Senior Courts Act, s 74(2)(b). See also *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].
10 Section 74(1) and (5).

[13] As the respondents all abided the decision of the Court, there is no order as to costs.

Solicitors:
Henderson Reeves, Whangārei for Applicant
Te Tari Ture o te Karauna | Crown Law Office, Wellington for First and Second Respondents
Norris Ward McKinnon, Hamilton for Third Respondent