

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA529/2022
[2023] NZCA 153**

BETWEEN CHRISTOPHER JOSEPH O'NEILL
Appellant

AND JUDICIARY OF AUCKLAND HIGH
COURT, REGISTRY OF AUCKLAND
HIGH COURT AND PERSONS AS YET
UNKNOWN
Respondents

Hearing: 30 March 2023

Court: Courtney, Lang and Downs JJ

Counsel: No appearance by Appellant
No appearance for Respondents

Judgment: 5 May 2023 at 11 am

JUDGMENT OF THE COURT

The appeal is dismissed.

REASONS OF THE COURT

(Given by Lang J)

[1] Mr O'Neill filed a proceeding in the High Court at Wellington against the respondents set out above. The Registrar referred the proceeding to Gwyn J under r 5.35A of the High Court Rules 2016. This permits the Registrar to refer a proceeding to a Judge for consideration under r 5.35B. Rule 5.35B permits a Judge to strike out or make other directions in relation to a proceeding if satisfied the proceeding is plainly an abuse of the Court's process.

[2] In a judgment delivered on 14 September 2022, Gwyn J struck the proceeding out on the basis that it was an abuse of the Court's process.¹ Mr O'Neill appealed to this Court against the Judge's decision.

[3] The appeal was set down for hearing on 28 March 2023. It was then listed for argument again on 30 March 2023. Mr O'Neill failed to appear on either occasion. The Court dismissed the appeal on 30 March 2023 and now gives it reasons for doing so.

Events leading up to the hearing

[4] On 12 December 2022, the Registry sent Mr O'Neill a notice of fixture by courier. This advised him that the appeal was to be heard in Auckland on Tuesday 28 March 2023. It also advised him that his synopsis of argument and bundle of authorities needed to be filed by 28 February 2023.

[5] Mr O'Neill did not file any further documents. However, on 27 March 2023 he contacted the Registry by telephone to advise that he would not be able to attend the hearing on 28 March 2023 because he was unwell. He gave no details as to the nature of his illness. He advised the Registry that he cannot be contacted by telephone or email.

[6] Mr O'Neill did not appear when the appeal was called on 28 March 2023 at 10 am. Later the same day the Registry sent Mr O'Neill a letter advising him that the appeal had been adjourned until Thursday 30 March 2023 at 9.30 am. The letter also advised Mr O'Neill that the hearing would proceed on that date unless he produced a medical certificate indicating that he would be medically unfit to attend Court. The Registry sent the letter to Mr O'Neill by courier.

[7] At 1.25 pm on 28 March 2023 Mr O'Neil contacted the Registry by telephone. He advised that it was impossible for him to provide a medical certificate before the hearing on 30 March 2023. He then did not appear when the matter was called on that date.

¹ *O'Neill v Judiciary of Auckland High Court* [2022] NZHC 2359.

[8] Against that background, the panel proceeded on the basis that Mr O’Neill had elected not to appear and not to provide a medical certificate as requested. When the matter was called, Courtney J announced that in Mr O’Neill’s absence the appeal was dismissed with reasons to be given in due course. These are those reasons.

The proceeding

[9] Mr O’Neill filed a proceeding in the High Court at Wellington on 10 August 2022 headed as “an application to the [H]ead-of-[B]ench, and formal complaint to same”. The proceeding was dated 26 July 2022.

[10] The proceeding has its genesis in a complaint that Mr O’Neill made to the New Zealand Law Society. The Society issued a decision on 23 December 2021. Mr O’Neill was dissatisfied with the decision and applied for review of the decision by the Legal Complaints Review Officer (LCRO). The application alleges that the LCRO wrongly refused to recuse himself when challenged due to his involvement in another appeal before this Court in which Mr O’Neill is also involved. It also alleges a registry officer of this Court “perverted the course of justice to stop [the] appeal taking place”. This allegation appears to have its basis in the fact that the staff member (erroneously in Mr O’Neill’s view) concluded the appeal had been filed out of time.

[11] Mr O’Neill applied for judicial review of the LCRO’s decision. He perceived that the High Court was not progressing his application in a timely manner. This prompted him to file a without notice application on 1 July 2022, the nature of which is not apparent from the documents before this Court. This evoked no response and Mr O’Neill then filed the proceeding that Gwyn J struck out.

The Judge’s decision

[12] The Judge decided the proceeding was an abuse of the High Court’s process for the following reasons:

- (a) The fact that the application did not set out a legal cause of action meant that it would be manifestly unfair to all defendants if they were required to respond to it.²
- (b) One of the categories of persons named as defendants was “persons as yet unknown”. Any proceeding must relate to an identifiable defendant.³
- (c) To the extent that the application names parties, it does so in such broad terms that there is not a sufficiently identifiable defendant. The parties named are the Judiciary of Auckland High Court and the Registry of Auckland High Court.⁴
- (d) Judges of the High Court enjoy absolute immunity from suit whilst exercising their judicial functions.⁵

[13] These factors led the Judge to conclude that the application met the test imposed by r 5.35B. Gwyn J considered that the Court would be exercising poor control of its processes if it allowed the proceedings to continue so that the defendant would be required to respond through the Court process.⁶ She therefore struck the application out.

Decision

[14] We have concluded the Judge was correct to strike the proceeding out, and largely for the reasons she gave. It is not possible to file a proceeding against the Judiciary and Registry of the Auckland High Court as a group. It is also clearly impossible to issue a proceeding against persons who are as yet unknown.

² At [7].

³ At [8].

⁴ At [9].

⁵ At [10], citing *Nakhla v McCarthy* [1978] 1 NZLR 291 (CA) at 294 and 299; and *Attorney-General v Chapman* [2011] NZSC 110, [2012] 1 NZLR 462 at [161]–[165].

⁶ At [11], quoting *Smyth-Davoren v Parker* [2018] NZHC 3034 at [8].

[15] We also note that the intituling and body of the application suggest that Mr O'Neill intends the proceeding to be both an application seeking orders requiring the Head of Bench of the High Court to take steps to progress his application for judicial review of the LCRO's decision and a complaint that she has failed to do so to date. However, he does not name the Chief High Court Judge as a defendant. This defect could be rectified by substituting the Chief High Court Judge as the defendant, but this would not solve the problem that the proceeding contains no tenable cause of action. There is no jurisdiction for the High Court to make an order requiring the Chief High Court Judge to take steps to progress a proceeding or to resolve a complaint that she has not done so to date.

[16] We have considered the material Mr O'Neill filed in support of the present appeal. It does not provide any legal basis for his claim and we are satisfied that issue is insurmountable. An oral hearing would therefore not have assisted Mr O'Neill's cause.

Result

[17] The appeal is dismissed.