

IN THE COURT OF APPEAL OF NEW ZEALAND

CA23/03

BETWEEN	NGAHUIA REIHANA WHANAU TRUST Applicant
AND	MAVIS AND EARL FLIGHT First Respondents
AND	ANNIE NGAHUIA KAKAHI REIHANA WHANAU TRUST Second Respondent

Hearing: 19 July 2004

Coram: Anderson P
Glazebrook J
Hammond J

Appearances: T C Reihana in Person
L D Paul for Second Respondent

Judgment: 26 July 2004

JUDGMENT OF THE COURT DELIVERED BY ANDERSON P

[1] This is an application by Mr Reihana to recall a judgment of this Court given in an appeal presented by him, on 14 July 2003. Costs were awarded against Mr Reihana who subsequently applied for recall of the judgment in so far as it dealt with costs. That application was dismissed. Now Mr Reihana applies for recall of the substantive judgment excluding costs. His argument is to the effect that he was taken by surprise at the Court's approach to the issues in the appeal and was unprepared to deal with them. The argument is that he was not fairly heard in relation to the appeal.

[2] We do not accept that there is any reason to recall the judgment. That appeal was manifestly wanting in legal merit and no sensible purpose could be served in revisiting the case. Nor do we accept that the Court was responsible for any shortcomings in Mr Reihana's arguments on the appeal.

[3] It is becoming a matter of concern not just to this Court but to others in the western common law system that disaffected litigants, usually appearing in person, repeatedly make application for recall of judgments which they steadfastly refuse to accept. It is timely to characterise plainly unmeritorious applications of that sort as an abuse of the Court's process and to reaffirm the rarity of legal justification for recalling judgments.

[4] The respondents seek costs, having been troubled on numerous occasions by this unmeritorious litigation. Mr Reihana is himself an undischarged bankrupt. The question of his authority to act for the trustees was raised on an earlier occasion in a Minute issued by the President together with a caution that the trustees could be held personally liable for costs if they invested Mr Reihana with authority to pursue litigation on their behalf. In a letter, undated but received by this Court on 16 March 2004, Mr Colin Horonuku Reihana and Ms Patricia Madina Quarrie, identify themselves as responsible trustees of the trust and acknowledge that they might be personally liable for costs arising from the hearing and determination of the present application. The respondents rely on that acknowledgement in seeking an order for costs personally against Mr Colin Horonuku Reihana and Ms Patricia Madina Quarrie. Costs are awarded against each of them personally in the sum of \$500, together with half the respondents' allowable disbursements, to the intent that the respondents shall receive \$1,000 contribution towards their costs and all other allowable disbursements.

Solicitors:
Wynn Williams & Co, Christchurch for Second Respondent