

IN THE COURT OF APPEAL OF NEW ZEALAND

CA550/2014  
[2015] NZCA 5

BETWEEN MALCOLM EDWARD RABSON  
Applicant

AND REGISTRAR OF THE SUPREME  
COURT  
First Respondent

MINISTRY OF JUSTICE  
Second Respondent

Counsel: Applicant in person  
K Laurensen for Respondents

Judgment: 30 January 2015 at 2.00 pm  
(On the papers)

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**JUDGMENT OF FRENCH J**  
**(Review of Deputy Registrar's Decisions)**

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- A The applications for review of the Deputy Registrar's decisions dated 31 October 2014 and 28 November 2014 are dismissed.**
- B The applicant is granted an extension of time under r 43(2) of the Court of Appeal (Civil) Rules 2005 until 31 March 2015 to apply for the allocation of a hearing date and file the case on appeal.**
- C The applicant is granted an extension of time for compliance with r 35(2) of the Court of Appeal (Civil) Rules 2005 relating to security for costs. Within 20 working days of the date of this judgment, the applicant must either pay security for costs or apply to the Registrar for dispensation of security for costs.**
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## REASONS

### Introduction

[1] Mr Rabson has filed applications for review in respect of what he describes as two decisions made by the Deputy Registrar.

[2] The applications both arise out of a judgment I delivered on 2 October 2014.<sup>1</sup> The Deputy Registrar had refused to accept Mr Rabson's notice of appeal for filing. I granted Mr Rabson's application for review of that decision and directed that the notice of appeal be accepted for filing as at 27 August 2014, being the date Mr Rabson had originally purported to file the notice.

[3] The first of the two current applications relates to a document Mr Rabson purported to file on 31 October 2014. The document was headed "Application For A Seciton [sic] 61A(2) Review and Temporary Stay of French J's Judgment of 2 October 2014". However, the body of the document stated that Mr Rabson was applying for "leave to appeal" my judgment.

[4] The Deputy Registrar refused to accept the document for filing on the grounds that the nature of the application was unclear and the Court lacked jurisdiction (the Deputy Registrar's decision of 31 October 2014).

[5] On 28 November 2014 the appeal was deemed abandoned under r 43 of the Court of Appeal (Civil) Rules 2005, Mr Rabson having failed to apply for a hearing date and file a case on appeal within the requisite three month time period. The Deputy Registrar issued a certified notice of result to this effect dated 28 November 2014 (the notice of result).

[6] On 9 December 2014 Mr Rabson emailed the Deputy Registrar alleging that in refusing to accept his 31 October 2014 application for stay and review she had acted without jurisdiction. He requested that she process the application. In a subsequent email, Mr Rabson confirmed that his email should be treated as an application for review of the Deputy Registrar's decision of 31 October.

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<sup>1</sup> *Rabson v Registrar of the Supreme Court* [2014] NZCA 481.

[7] In a further email, Mr Rabson forwarded another copy of his application. This copy differs from the document he attempted to file on 31 October 2014. In the body of the application the words “for leave to” in the phrase “for leave to appeal” have been crossed out and the word “review” handwritten above.

[8] On 23 December 2014, Mr Rabson filed a further application for review, this application being expressed as an application to review the notice of result. The grounds of the second application are that the Deputy Registrar was wrong to issue the notice of result while Mr Rabson’s application for review of her decision of 31 October 2014 was still pending and that the three month period under r 43 only started to run from the date of my judgment, namely 2 October 2014. Accordingly, the period had not expired by 28 November 2014.

### **Analysis**

[9] As will be readily apparent, the procedural history of this matter has become unnecessarily confused.

[10] Having reviewed the Deputy Registrar’s decision of 31 October 2014, I am satisfied that it was correct for the reasons given. This Court has no jurisdiction to entertain the application sought by Mr Rabson. Section 61A(2) of the Judicature Act 1908 does not apply to a decision of a single judge reviewing a decision of a Registrar.

[11] As regards the notice of result, that was not a “decision” as such by the Deputy Registrar. It was the automatic consequence of r 43(1) and so is not reviewable.

[12] The gravamen of Mr Rabson’s complaint is that I should not have “backdated” the date of filing of his notice of appeal to 27 August 2014. However, my decision was in accordance with the usual practice.

[13] In the circumstances, I am however prepared to treat Mr Rabson’s application as being an application for an extension of time under r 43(2) and to grant him an

extension of time until 31 March 2015 to apply for a hearing date and file the case on appeal.

[14] In order for Mr Rabson to be able to do that, he will need to address the issue of security for costs. Rule 37(2) of the Court of Appeal (Civil) Rules states that an appellant may not apply for a hearing date if he or she is in default of any obligation to pay security for costs.

[15] In my previous judgment of 2 October 2014, I granted Mr Rabson an extension of time relating to security for costs, ordering that within 20 working days of the date of the judgment he was required to do one of two things – either pay security or apply for a dispensation.

[16] That time has now passed and Mr Rabson has neither paid security nor applied for dispensation. It appears from his communications with the Registry that he may be under the misapprehension that I had refused to grant dispensation. That is not a correct interpretation of the order. Any application for dispensation would still need to be made to the Registrar in the ordinary way.

[17] In order to regularise the situation, I therefore also grant a further extension of time relating to security for costs. Within 20 working days of the date of this judgment, Mr Robson must either apply to the Registrar for dispensation of payment of security for costs or he must pay security.

### **Outcome**

[18] The applications for review of the Deputy Registrar's decisions dated 31 October 2014 and 28 November 2014 are dismissed.

[19] Mr Rabson is granted an extension of time under r 43(2) of the Court of Appeal (Civil) Rules until 31 March 2015 to apply for the allocation of a hearing date and file the case on appeal.

[20] Mr Rabson is also granted a further extension of time relating to security for costs. Within 20 working days of the date of this judgment he must either apply to the Registrar for dispensation of security or he must pay security for costs.

Solicitors:  
Crown Law Office, Wellington for Respondents