

**NOTE: ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH
SS 11B, 11C AND 11D OF THE FAMILY COURT ACT 1980.**

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA477/2023
[2023] NZCA 531**

BETWEEN

IAN ADAMSON

First Appellant

KATE JONES

Second Appellant

AND

KATE JONES

First Respondent

JAMES ROBINSON

Second Respondent

Counsel: Appellants in person
C J Nicholls for Second Respondent

Judgment: 26 October 2023 at 3 pm
(On the papers)

JUDGMENT OF GILBERT J

The application for review of the Deputy Registrar's decision is declined.

REASONS

[1] Mr Adamson applies for review of a Deputy Registrar's decision declining his application for an extension of time to apply to dispense with security for costs.¹

¹ To give effect to statutory suppression requirements, the same pseudonyms have been adopted for the parties as in other proceedings.

[2] On 21 August 2023, the appellants filed a notice of appeal against a judgment of Gwyn J delivered on 9 August 2023 declining their application under the Habeas Corpus Act 2001 (the Act) on behalf of Ms Jones' child.² Mr Adamson is the child's maternal grandfather. Mr Robinson is the child's father. The Judge was satisfied that an interim parenting order made by the Family Court was currently in force in respect of the child, and accordingly she was not being unlawfully detained.

[3] On 22 August 2023, Miller J made a direction under s 17(1) of the Act that the appeal was not to be given precedence over other matters before the Court. The Judge observed that the appeal was an attempt to relitigate a parenting order made by the Family Court and the appellants have a remedy in that Court. The Judge directed the Registrar to consider security for costs in the usual way.

[4] Security for costs for the appeal was duly set at \$7,060 pursuant to r 35 of the Court of Appeal (Civil) Rules 2005.

[5] On 21 September 2023 Mr Adamson applied for an extension of time to apply to dispense with security for costs. The application was opposed by Mr Robinson on the grounds summarised in Mr Nicholls' memorandum dated 25 September 2023.

[6] The application was declined by the Deputy Registrar on 10 October 2023 for reasons which may be summarised as follows.

[7] Although the application for an extension of time to apply to dispense with security for costs was made only three working days out of time, it was not accompanied by an application for dispensation. No explanation for the delay was given, nor was any indication given as to the further time that would be required to make the application to dispense with security for costs. The total extension of time required would therefore be at least four weeks, around twice the usual period. The Deputy Registrar took into account that the appellants are experienced litigants, not unfamiliar with the relevant procedures. The delay was likely to cause Mr Robinson some prejudice because the appeal could not be progressed while issues as to security for costs remained outstanding. Importantly, any application to dispense

² *Adamson v Jones* [2023] NZHC 2115.

with security for costs was likely to be hopeless because the appeal was not one that would be brought by a reasonable and solvent litigant. The comments made by Miller J in his minute supported this view. For these reasons, the Deputy Registrar could see no justification to grant an extension of time to apply to dispense with security for costs.

[8] Mr Adamson seeks a review of this decision.

[9] Having considered the materials filed, I am satisfied the Deputy Registrar was correct to decline the application for the reasons she gave.

Result

[10] The application for review of the Deputy Registrar's decision is declined.

Solicitors:
Chris Nicholls Law, Lower Hutt for Second Respondent