

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**I TE KŌTI PĪRA O AOTEAROA**

**CA680/2020  
[2021] NZCA 487**

BETWEEN

VINCENT ROSS SIEMER  
Appellant

AND

AUCKLAND HIGH COURT  
First Respondent

MATTHEW SIMON RUSSELL PALMER  
Second Respondent

Court: French, Brown and Courtney JJ

Counsel: Appellant in Person  
A M Powell and R M McMenamin for Respondents

Judgment: 24 September 2021 at 9 am  
(On the papers)

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**JUDGMENT OF THE COURT**

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**The appeal is struck out.**

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**REASONS OF THE COURT**

(Given by French J)

[1] Under r 44A(1)(c) of the Court of Appeal (Civil) Rules 2005 (Rules), this Court of its own initiative has the power to strike out or stay an appeal if an appeal is frivolous, vexatious or otherwise an abuse of the process of the Court.

[2] On 17 May 2021, in accordance with r 44A(2)(a), Mr Siemer was given more than 10 working days' prior notice of the Court's intention to consider making such an

order in respect of this appeal.<sup>1</sup> He was also given an opportunity to file written submissions which he has done.

[3] The appeal has its genesis in a minute dated 28 February 2020 of Palmer J. In the minute the Judge made an observation about the possible application of s 166 of the Senior Courts Act 2016 to certain proceedings Mr Siemer had before the High Court. Section 166 empowers a Judge of the High Court to make an order restricting the commencement or continuation of a proceeding.

[4] In the end, Palmer J did not make an order under s 166. However, Mr Siemer sought to appeal to this Court against the observation made in the minute. In a judgment of this Court dated 4 September 2020, that appeal was subsequently struck out under r 44A(1)(c) of the Rules on the grounds that there was no judgment decree or order of the High Court to appeal.<sup>2</sup> Following an unsuccessful recall application of that judgment,<sup>3</sup> Mr Siemer then applied for leave to appeal to the Supreme Court.<sup>4</sup> He was required to pay a filing fee and did not pursue the matter any further.

[5] Mr Siemer then issued proceedings in the High Court against the Auckland High Court and Palmer J seeking a writ of mandamus to require Palmer J to issue a judgment on whether a s 166 order should be made. Another High Court Judge, Powell J, struck out that proceeding as an abuse of process.<sup>5</sup> Mr Siemer then filed this appeal against the decision of Powell J.

[6] In opposing this appeal being struck out, Mr Siemer contends it would be a breach of the rule of law for his appeal to be dismissed without a proper determination of its merits and the provision of reasons following a hearing. He submits that he has the right to have his proceeding against Palmer J to be determined and invokes s 27 of the New Zealand Bill of Rights Act 1990 (right to

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<sup>1</sup> *Siemer v Auckland High Court* [2021] NZCA 194 at [18].

<sup>2</sup> *Re Siemer* [2020] NZCA 393.

<sup>3</sup> *Re Siemer* [2020] NZCA 571.

<sup>4</sup> *Re Siemer* [2020] NZSC 136.

<sup>5</sup> *Siemer v Auckland High Court* [2020] NZHC 3072.

justice). Mr Siemer also disputes the assessment made in the context of declining dispensation for security of costs that his appeal is without merit.

[7] In our view, there is no doubt that this appeal is an abuse of process. As the respondents submit, it is an attempt to open a pathway to again challenge what Palmer J said in his minute and thus a collateral attack on this Court's decision in September 2020. That on its own is sufficient grounds for a strike-out order under r 44A(1)(c). We note the further point that the High Court has no jurisdiction to judicially review its own decisions so for that reason alone the proceeding and this appeal are in any event doomed to fail.<sup>6</sup>

[8] There is no breach of the rule of law or s 27 of the New Zealand Bill of Rights Act involved in making a strike-out order in the circumstances of this case. Rule 44A(1)(c) is part of the law of New Zealand. It is designed to protect the processes of the law from abuse. The conditions precedent to the exercise of the power in this case are all satisfied.

[9] We accordingly order that the appeal be struck out.

Solicitors:  
Crown Law Office, Wellington for Respondents

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<sup>6</sup> See *Auckland District Court v Attorney-General* [1993] 2 NZLR 129 (CA) at 133.