NOTE: PURSUANT TO S 437A OF THE ORANGA TAMARIKI ACT 1989, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE https://www.justice.govt.nz/family/about/restriction-on-publishing-judgments/

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2020-404-73
[2020] NZHC 296

UNDER	the Judicial Review Procedure Act 2016
BETWEEN	MC Applicant
AND	CHIEF EXECUTIVE OF ORANGA TAMARIKI, MINISTRY FOR CHILDREN Respondent

Hearing:	20 February 2020
Appearances:	The applicant in person L M Jackson for the respondent
Judgment:	27 February 2020

JUDGMENT OF PALMER J

This judgment was delivered by me on Thursday 27 February 2020 at 11.00am.
Pursuant to Rule 11.5 of the High Court Rules

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Registrar/Deputy Registrar

Solicitors/Party:
The applicant
Crown Law, Wellington

What happened?

[1] The applicant sought to file these judicial review proceedings on 21 January 2020, challenging decisions of the Family Court.[1] The statement of claim is not easy to follow in terms of New Zealand law. After certain background is recited, the two "forms of action" stated are:

> 1. **The issue** in law is that Judge I Malosi failure to identify the "Defendant" and use a statutory power is a fatal objection to the jurisdiction of the court when it has not cognizance of the subject-matter of the action, facts or testimony to substantiate the claim, Actual facts not mere allegations are determinative of issue of jurisdiction.
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> 2. Judge I Malosi failed to call Persecutor to take the stand and testify that the Defendant and [MC] were one and the same while under oath and relied on Affidavit and hearsay.

[2] The relief sought for the first of these is that the judgment is void ab initio and, for the second, "Reinstatement, Restitution and Discharge". As best as I can determine, on the construction most generous to the applicant, she is concerned about the following procedural irregularities in the Family Court's proceeding:

(a) Ms MC was not served with notice that the plaintiff was going to proceed with court action for summary judgment; and

(b) the Judge's decision was ultra vires and failed to observe natural justice, due process or procedural fairness. But no details are given of these alleged defects.

[3] When the proceeding was filed, the Family Court judgment was the subject of appeal to the High Court, including on the ground of alleged procedural irregularities. On 16 April 2019, Gordon J had issued a judgment setting out the issues to be determined on appeal, including alleged procedural irregularities. The appeal hearing was on 5 December 2019, but no judgment had yet issued.

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[1] *Chief Executive of Oranga Tamariki, Ministry for Children v MC* [2018] NZFC 4705. I anonymise this judgment, under the Family Court Act 1980, in the same way as was done in that judgment and its appeal judgment.

[4] The Registry referred the applicant's materials related to the application for judicial review to the Duty Judge, under r 5.35A of the High Court Rules 2016 (the Rules) on the basis they may be an abuse of the process of the Court. On 23 January 2020, Fitzgerald J issued a minute, observing that the judicial review proceedings may raise slightly different allegations to those to be determined in the appeal proceedings. She ordered that the application for judicial review be served on the respondent but stayed pending determination of the appeal proceedings.

[5] On 31 January 2020, Hinton J issued judgment in the appeal proceedings, dismissing the appeal.[2]

Submissions

[6] At the call of the judicial review proceedings in the Judicial Review List on 20 February 2020, Ms MC submitted:

(a) The issues in the application for judicial review are not those in the appeal.

(b) While the appeal is in respect of due process issues which were before Hinton J, she did not take them into consideration.

(c) Ms MC should not have raised the due process issues in the appeal. She should have raised them in a judicial review because of their focus on procedural irregularities. That was why Hinton J did not take them into account.

(d) Oranga Tamariki refused to let her take her points on appeal, as reflected in the ruling of Gordon J.

(e) When her children were taken, Oranga Tamariki did not have a court order and would not address that point in the appeal. Hinton J said that

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2 *MC v The Chief Executive, Oranga Tamariki* [2020] NZHC 50.

was not in the approved list of points for appeal. Ms MC considers she did not get a fair hearing at the appeal hearing.

(f) This resulted in a clear miscarriage of justice.

(g) Ms MC objects to a proposed strike-out of the application for judicial review on the basis she was unable to address her whole situation which is based on forgery.

(h) Ms MC requested a transcript and audio recording by email and in person to the Registry and has not received anything. I have reminded the Registry of this and the transcript has been sent to her.

[7] Ms Jackson, for the Chief Executive, noted that the decision as to whether the application is an abuse of process was raised by Fitzgerald J, not by the Chief Executive. But she submitted there are matters indicative of abuse of process as the issues in the judicial review appear in substance to be those in the appeal. She handed up to me, and gave to Ms MC, a comparative table. She submitted the appeal judgment considered a wide range of procedural concerns, three issues about jurisdiction and evidential concerns about forgery, and rejected all of them. Ms Jackson submitted the application for judicial review would be a collateral attack on the High Court appeal judgment and would be fruitless.

Law

[8] Rule 5.35B of the Rules provides that the Court may strike out a proceeding under r 15.1 if satisfied the proceeding is plainly an abuse of the process of the court. The title of the rule suggests the power applies "before service". No doubt that is because r 5.35A(3)(b) empowers the Registry, who refers such a proceeding to a judge, to decline to release the notice of proceeding for service. However, there is nothing in the text of these rules otherwise to suggest the power may not be exercised after service, as has happened here.

[9] Rule 15.1 provides a Court may strike out all or part of a pleading if it:

(a) discloses no reasonably arguable cause of action, defence, or case appropriate to the nature of the pleading; or

(b) is likely to cause prejudice or delay; or

(c) is frivolous or vexatious; or

(d) is otherwise an abuse of the process of the court.

[10] Rule 15.1(4) provides this rule does not affect the Court's inherent jurisdiction. I consider that, even if r 5.35B is limited to the period before service is effected, the same power is available to the Court under its inherent jurisdiction.

Should the statement of claim be struck out?

[11] The two "forms of action" which appear to be the point of the statement of claim do not disclose causes of action known to the law of judicial review. The complaint about the notice of the court action was dealt with at length in the appeal judgment. The statement of claim provides no details for the various categories of procedural irregularities listed by label. I cannot identify issues in the application for judicial review different from those dealt with in the appeal judgment.

[12] I consider that the statement of claim discloses no reasonably arguable cause of action, hearing it is likely to cause prejudice and delay to the respondent and the court system and it is an abuse of the process of the court. I strike out the statement of claim accordingly.

[13] Finally, I note that Ms MC appears to be advised by people styling themselves the "Universally Internationally Recognized Federal Marshals". This court has seen the effects of such advice before. It is often incomprehensible in terms of law and risks severely misleading and disadvantaging the litigant. I urge Ms MC to get qualified legal advice.

Palmer J