IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA588/2023
[2023] NZCA 572

BETWEEN	CHRISTOPHER JOSEPH O'NEILL Appellant
AND	CHRISTOPHER JOHN HIPKINS First Respondent
AND	DAVID WILLIAM PARKER Second Respondent

Court:	Mallon, Fitzgerald and Churchman JJ
Counsel:	Appellant in person No appearance for Respondents (as directed)
Judgment: (On the papers)	17 November 2023 at 12 pm

JUDGMENT OF THE COURT

The appeal is struck out.

REASONS OF THE COURT

(Given by Churchman J)

Introduction

[1] On 18 September 2023, Walker J struck out, under r 5.35B of the High Court Rules 2016, two applications filed by Mr O'Neill.[1] The first was an application described as a judicial review, with the Prime Minister and Attorney-General named

1 *O'Neill v Hipkins* [2023] NZHC 2594 [strike out decision].

as the respondents. The second was described as an interlocutory application without notice in the same proceeding.

[2] Mr O'Neill now appeals that decision.

[3] On 16 October 2023 this Court gave Mr O'Neill notice of its intention to consider striking out the appeal under r 44A of the Court of Appeal (Civil) Rules 2005 on the ground that it appeared to be an abuse of the process of the Court. Mr O'Neill has been given an opportunity to make submissions, as required under the rule. The respondents were excused from taking part in the appeal.

Background

Interlocutory application

[4] The interlocutory application came about as a result of Mr O'Neill's judicial review application initially being rejected for filing. On 17 August 2023 the Registrar of the High Court at Wellington returned Mr O'Neill's judicial review application to him on the basis that the documents were not compliant with the Rules. The Registrar explained what was required to comply when filing an application for judicial review. On 21 August 2023 Mr O'Neill returned the documents to the registry for filing, asserting that they had been wrongly rejected. He added an interlocutory application requiring a judicial decision on acceptance of the documents. Although the documents still did not comply with the High Court Rules, the Registrar accepted the documents for filing rather than returning them again to Mr O'Neill, and instead referred the documents to a judge under r 5.35A of the High Court Rules as a plainly abusive process.

[5] In striking out the interlocutory application Walker J noted that, because the documents had ultimately been accepted for filing, the interlocutory application seeking a judicial decision on acceptance of the documents was moot.[2]

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2 At [9].

Judicial review

[6] The background to the judicial review application was that, in 2022, the High Court had struck out earlier proceedings brought by Mr O'Neill against a decision of the Judicial Conduct Commissioner.[3] Mr O'Neill appealed to this Court. After Mr O'Neill failed to appear before this Court, apparently because he was isolating after contracting COVID, this Court set down the appeal for hearing two days later and required Mr O'Neill to provide a medical certificate if he was not going to appear. When Mr O'Neill again failed to appear and did not provide a medical certificate, this Court dealt with Mr O'Neill's appeal on the papers, dismissing the appeal and upholding the High Court decision striking out the claim as an abuse of process.[4] The Supreme Court declined Mr O'Neill's application for leave to appeal to the Supreme Court.[5] The Court accepted that the requirement to produce a medical certificate may be an issue of general or public importance but held that no other issues met that threshold.[6] The Court noted the proceedings faced concurrent findings of the High Court and this Court that they were an abuse of process and considered there was no appearance of a miscarriage of justice.[7]

[7] Against that background, Mr O'Neill's judicial review application asserted that the respondents created a situation in which he was denied justice in this Court and in the Supreme Court. In striking out the application Walker J found that the pleading was a collateral attack on the judgments of this Court and the Supreme Court, and that to permit the proceeding to remain on foot would amount to an abuse of process.[8] She considered it would be manifestly unfair to require the respondents to respond to Mr O'Neill's allegations or treat the proceeding as a proceeding of the court.[9]

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3 *O'Neill v Ritchie* [2022] NZHC 1225.
4 *O'Neill v Judicial Conduct Commissioner* [2023] NZCA 152.
5 *O'Neill v Judicial Conduct Commissioner* [2023] NZSC 88 [Supreme Court leave judgment].
6 At [4].
7 At [4].
8 Strike out decision, above n 1, at [18].
9 At [19].

Submissions on appeal

[8] Mr O'Neill filed a notice of appeal on 5 October 2023 and additional submissions in support on 30 October 2023. He challenges Walker J's decision on a number of grounds.

[9] Mr O'Neill claims the judgment is "both unsound, full of inaccuracies, and produced in panic to protect the government". He alleges judicial and political corruption affecting his right as a citizen to justice. In particular, he says the Judge's "kow-towing to government" means the judgment is unsafe. He says the judgment involved panic, abuse, criminality, political interference and lies. Mr O'Neill claims "Walker J acts beyond his [sic] status, his [sic] judgment is un-safe and must be overturned, he [sic] places, via corruption, the Government above the law, and ignores the rights of the public".

[10] Mr O'Neill denies that there was an abuse of process and says that, "[b]y dint of being government", the Prime Minister and Attorney-General, "by there [sic] own choices, put themselves before the public (whom they serve)". He says that he has "by legal '<u>right</u>'" the protection of the New Zealand Bill of Rights Act 1990, the constitution of New Zealand and a citizen's right to natural justice, which cannot be denied simply because the respondents were part of the Government.[10]

[11] He claims the appeal should be allowed because the Supreme Court has ruled this a matter of public importance.

[12] He says that to uphold Walker J's decision, this Court would have to rule that "the legislators" wished to silence the public and to place Government above the law, to protect politicians from public scrutiny and to hide their actions, to allow Government to do as it wishes and not be held accountable, and to ultimately turn New Zealand into a lawless society.

[13] Mr O'Neill wants this Court to recognise that the "unsafe and utterly corrupt ruling (achieved by corruption) of Walker J is unsafe, and must be overturned" and to

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[10] Emphasis in original.

remit the matter back to the High Court, where, he says, the Supreme Court has said he is entitled to have it heard.

[14] Mr O'Neill also challenges the ability of this Court to hear the case fairly, "given its past involvement". Mr O'Neill requests that this "entire Court" recuse itself from the case "via returning it to the High-Court for hearing". He asks this Court to "[d]o the right thing".

[15] Mr O'Neill advises that, in the event this Court strikes out his appeal, he intends to appeal to the Supreme Court.

Discussion

[16] Under r 44A(1)(c) of the Court of Appeal (Civil) Rules, the Court may make an order striking out an appeal if the appeal is an abuse of the process of the Court.

[17] It is unclear whether Mr O'Neill challenges Walker J's decision striking out the interlocutory application. For completeness we record that, given that the documents were ultimately accepted for filing, the finding that the interlocutory application was moot was plainly correct. Any appeal against that decision would be an abuse of the process of the Court and is struck out.

[18] In respect of the appeal against Walker J's decision striking out the judicial review application, we consider that none of Mr O'Neill's submissions have any merit. He makes wide-ranging serious allegations, including of criminality and corruption. There is simply nothing put forward to support any of the various claims he makes, such as the judgment being produced "in panic" or of it being "communistic". The judgment is an orthodox application of r 5.35B of the High Court Rules.

[19] Mr O'Neill places significant weight on the comment made by the Supreme Court that the requirement for a medical certificate to be produced "may" be a matter of general or public importance. However, this was simply one factor the Supreme Court said could be taken into account in deciding whether to grant leave to appeal.

[20] Although Mr O'Neill considers that the Supreme Court judgment declining his application for leave to appeal supports his position that he is entitled to be heard in the High Court, this is clearly not the case. The Court did not say the requirement for a medical certificate *was* a matter of general or public importance and the Court did not have to decide whether such a requirement *was* in fact inappropriate or unlawful. The Court decided not to grant leave to appeal, in particular because, "[g]iven the abuse of process involved in the proceeding", the Court saw "no appearance of a miscarriage in refusing leave to appeal".[11] The comment of the Supreme Court as to there potentially being a question of general or public importance therefore does not in fact support Mr O'Neill's position that he is entitled to be heard in the High Court.

[21] Walker J was correct to find that the judicial review application appears to be a collateral attack on the judgments of this Court and the Supreme Court, and that to allow the proceeding to continue would be an abuse of process. We agree that it would be manifestly unfair to require the respondents to respond to the allegations or treat the proceeding as a proceeding of the court. Mr O'Neill's claims are specious, entirely untenable and unsupported by any evidence. Walker J's decision is unimpeachable. We consider that to allow the appeal "would strike at the public confidence in the Court's processes", in the words of this Court in *Moevao v Department of Labour*.[12] The appeal is an abuse of process and is struck out under r 44A of the Court of Appeal (Civil) Rules.

[22] Given the respondents were directed not to participate in the appeal, we make no order for costs.

Result

[23] The appeal is struck out.

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11 Supreme Court leave judgment, above n 5, at [4].

12 *Moevao v Department of Labour* [1980] 1 NZLR 464 (CA) at 482.