IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV-2013-485-6873
[2014] NZHC 1146

BETWEEN	T KOYAMA Appellant
AND	NEW ZEALAND LAW SOCIETY Respondent

Hearing: 16 April 2014

Appearances: No appearance for appellant
P Collins for respondent

Judgment: 28 May 2014

JUDGMENT OF CLIFFORD J

Introduction

[1] On 28 May 2013 the Human Rights Review Tribunal (the Tribunal) made an award of $8,000 costs against the appellant, Mr Koyama, in favour of the respondent, the New Zealand Law Society (NZLS).[1]

[2] On 18 September 2013 the Tribunal declined Mr Koyama's application to recall that costs decision.[2] Mr Koyama now appeals against that 18 September decision of the Tribunal

Facts

[3] This appeal is but a small part of a wide-ranging group of proceedings embarked on by Mr Koyama. They arise out of a 2006 decision of the then

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1 *Koyama v The New Zealand Law Society* [2013] NZHRRT 22.
2 *Koyama v The New Zealand Law Society* [2013] NZHRRT 29.

Canterbury District Law Society refusing to provide him with a certificate of character. As the Court of Appeal has explained:[3]

> [5] The origins of the applicant's [Mr Koyama's] grievance date back to 2006. He wished to be admitted to the bar, but the Canterbury District Law Society refused to provide him a certificate of character. However, the Otago District Law Society provided such a certificate to him in 2007, and he was admitted to the bar in May 2007.
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> [6] The applicant complained to the Human Rights Commissioner and the Privacy Commissioner about the actions of the Canterbury District Law Society. However, he subsequently dropped these complaints (he appears to dispute this, but the factual findings to that effect are not amenable to appeal).
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> [7] In 2009, the applicant commenced proceedings against the respondent in the Human Rights Review Tribunal. These proceedings related to the actions of the Canterbury District Law Society. There were two relevant decisions of the Tribunal. The first was a decision ruling against the applicant's objection to the chairperson of the Tribunal participating in the proceeding on the grounds of apparent bias.[4] The second was a ruling by the Tribunal that it did not have jurisdiction to deal with the applicant's claim because of the operation of the transitional provisions of the Lawyers and Conveyancers Act 2006.[5]
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> [8] The applicant's appeal to the High Court was against the Tribunal's decision relating to jurisdiction, but he sought also to challenge the decision relating to apparent bias. He was asked whether he wished to have his appeal treated as an application for judicial review to allow for these challenges to be pursued in the High Court, but declined. However he still tried to raise matters relating to the apparent bias ruling when the appeal was heard. Dobson J ruled that the apparent bias issue should not be considered in the High Court appeal. He did, however, engage with the applicant's complaint that the Tribunal ought to have convened a hearing before ruling on jurisdiction. The Judge determined that the Tribunal had the power to determine its own procedure, including the power to deal with a challenge to jurisdiction on the papers. He expressed himself to be satisfied that that was an appropriate way for the Tribunal to deal with the jurisdiction issue.

[4] Mr Koyama sought leave from the High Court to appeal Dobson J's decision. Justice Kós declined leave.[6]

[5] Mr Koyama then sought special leave from the Court of Appeal. The Court of Appeal declined special leave.[7]

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3 *Koyama v New Zealand Law Society* [2013] NZCA 115.
4 *Koyama v New Zealand Law Society* [2010] NZHRRT 2.
5 *Koyama v New Zealand Law Society* [2010] NZHRRT 13.
6 *Koyama v New Zealand Law Society* [2012] NZHC 2853.
7 *Koyama v New Zealand Law Society*, above n 3.

[6] Following that decision of the Court of Appeal, the Tribunal considered the respondent's costs applications in its two substantive decisions.

[7] In awarding costs of $8,000 to the respondent the Tribunal recorded the "tortuous" history of the matter, finding that it had:[8]

> …been an unnecessarily burdensome and intensive process as far as the NZLS is concerned, characterised by Mr Koyama taking every objection open to him and then responding with irrelevant and unhelpful material. … While it was Mr Koyama's "right" to take every point, the consequence of his doing so is properly to be recognised in the assessment of costs.

[8] Mr Koyama based his recall application on the proposition that the Tribunal should postpone addressing the costs application until proceedings taken by Mr Koyama before the United Nations Human Rights Committee had come to a conclusion and on the proposition that the three members of the Tribunal who made the 28 May 2013 decision were disqualified by reason of bias. The Tribunal found that:

(a) Mr Koyama had filed 14 pages of submissions in opposition to the NZLS costs application and had subsequently confirmed that those were the submissions he wished the Tribunal to consider. In response to advice that if he had nothing further to add, he should so confirm to the Tribunal, Mr Koyama advised that he intended to ignore any order of the Tribunal and that the United Nations Human Rights Committee was the appropriate tribunal to consider his complaints. The Tribunal then considered, but dismissed, Mr Koyama's contention that it should postpone its decision pending the outcome of the United Nations proceeding. Nothing new had been raised by Mr Koyama.

(b) The allegation of bias could not be made out on the principles set out in *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd* and *Siemer v Heron*.[9]

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8 *Koyama v New Zealand Law Society,* above n 1, at [29].

9 *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd* [2009] NZSC 72, [2010] 1 NZLR 35; *Siemer v Heron* [2011] NZSC 116, 1 NZLR 293.

(c) Finally, the Tribunal did not have jurisdiction to recall a decision but, if it had that jurisdiction, it would not have exercised it in the present case.

This appeal

[9] Mr Koyama's notice of appeal, dated 30 September 2013, narrates in detail the background to these matters. Then, under the heading Grounds for Appeal, Mr Koyama purports to challenge all four of the decisions of the Tribunal on the grounds of apparent bias.

[10] Mr Koyama, in terms of relief, requests that all those decisions of the Tribunal be vacated and that there be "a hearing on the merits of the case in the High Court with additional members of High Court as required under s 126 of the Human Rights Act 1993".

[11] There is no basis on which Mr Koyama can now, in this Court, challenge the first two decisions of the Tribunal which have already been considered by the Court of Appeal. Moreover, Mr Koyama's notice of appeal is clearly directed at the Tribunal's 18 September 2013 recall decision, notwithstanding the scope of the relief which Mr Koyama purported to seek. Furthermore, the sole issue that Mr Koyama raises, on appeal, is an allegation of bias. I consider this appeal accordingly.

[12] In doing so, the difficulty I face is that Mr Koyama chose not to file any substantive submissions in support of his appeal, nor to appear at the hearing of that appeal.

[13] To consider the significance of that matter it is necessary to record the procedural history of this appeal in some detail:

(a) A first case management conference was scheduled for Monday 4 November 2013. On 30 October 2013 Collins J considered memoranda filed by Mr Koyama and the respondent. Mr Koyama had asked that an amicus be appointed to represent him and assist the Court. That application was declined. Mr Koyama was ordered to

arrange his own legal representation and a further case management conference was then set down for 9 December 2013.

(b) On 9 December 2013 Mr Koyama's appeal was allocated a fixture date of 16 April 2014. Mr Koyama was to file his written submissions 21 days in advance, the respondent 14 days in advance.

(c) On 30 January 2014 Mr Koyama filed an application, dated 26 January 2014, for a stay of his appeal proceedings. He did so on the basis that he had asked the Minister for Courts to investigate his complaints arising from the Tribunal's costs order against him. On 17 February 2014 Ronald Young J declined that application, and noted that Mr Koyama's appeal would proceed on 16 April 2014 and that he should comply with the directions given by Simon France J on 9 December 2013.

(d) In a memorandum filed on 25 February 2014, dated 20 February 2014, Mr Koyama raised further issues regarding the management of his appeal. These related to further proceedings that Mr Koyama had filed or intended to file. In a minute of 25 February 2014 Ronald Young J noted that Mr Koyama had applied for this appeal, his new application for judicial review and a related application for recall of a decision by Dobson J to be consolidated or heard together in some way. That application was to be responded to within seven days by the respondent. In the meantime, Ronald Young J emphasised what he had told Mr Koyama previously, namely that this appeal was for hearing on 16 April 2014 and that Mr Koyama should assume the appeal would proceed on that day unless there was a further order of the Court.

(e) On 6 March 2014 Ronald Young J, having considered minutes of Mr Koyama dated 1 March 2014 and of the respondent dated 4 March 2014, declined Mr Koyama's application for this appeal, his judicial review proceedings and his application for a recall by Dobson J all to

be heard together. Ronald Young J repeated the position that this appeal was to be heard on its own on 16 April 2014.

(f) On 13 March 2014 Dobson J dismissed Mr Koyama's application for recall.

(g) On 16 March 2014 Mr Koyama applied to the Supreme Court for leave to appeal against the decisions of Ronald Young J recorded in his minute of 6 March 2014, and of Dobson J dismissing Mr Koyama's application for recall.

(h) On 20 March 2014 the Registrar of the Supreme Court advised Mr Koyama that the Supreme Court had no jurisdiction to consider his application for leave.

(i) On 1 April 2014 Glazebrook J declined Mr Koyama's application to review the Registrar's decision of 20 March 2014, confirming that the Supreme Court had no jurisdiction to hear appeals against interlocutory orders of the type made by Ronald Young and Dobson JJ in the decisions which Mr Koyama complained of.[10]

(j) On 4 April 2014 the respondent applied to dismiss Mr Koyama's appeal for want of prosecution. Given the history of the matter, and the repeated occasions on which it had been emphasised to Mr Koyama that his appeal would be heard on 16 April, I did not consider that to be the appropriate course of action at that time.

(k) On 9 April 2014, at my direction, the Registrar of the High Court reminded Mr Koyama of the requirement that he file his substantive submissions by 26 March, that he had not done so and that he was to advise the Court when it would receive them. Mr Koyama replied, copying correspondence to the Chief Justice relating to Glazebrook J's decision, and advising that he would not participate in the proceedings

[10] *Koyama v New Zealand Law Society* [2014] NZSC 30.

in the High Court while the Supreme Court had jurisdiction on the subject matter.

(l) By minute of 14 April 2014 and in response to a memorandum filed by Mr Koyama on 13 March 2014, again seeking a stay of the proceedings by reference to the matters he had filed before the Supreme Court, I declined to stay the hearing of this appeal. As I noted, by that time Mr Koyama's application for leave to appeal to the Supreme Court had been dealt with.

(m) Mr Koyama filed a further application for stay by email on 14 April, referring to his correspondence to the Chief Justice.

[14] As the foregoing narrative shows, notwithstanding having been advised of the hearing date for this appeal as long ago as 9 December 2013 and having been told by the Court on no less than four occasions that his appeal was to be heard on 16 April 2014, Mr Koyama did not file substantive submissions and did not appear before me. Whether Mr Koyama points, as he has in the past, to matters at large before the United Nations, or to proceedings in the Supreme Court that clearly have now been disposed of, those considerations were no reason not to advance his appeal on a substantive basis.

[15] For the respondent, Mr Collins filed, and briefly addressed, written submissions in opposition Mr Koyama's appeal. In essence NZLS's position is that its substantive costs order was correctly decided. As it found when declining Mr Koyama's recall application – it had no power of recall and that, in any event, it would not have exercised that power in the circumstances. Mr Koyama's proper remedy was not an appeal against the recall decision, but rather appeal (or judicial review) of the earlier, substantive, costs decision. In particular, if issues of bias were raised, judicial review was the appropriate way to challenge the relevant decision.

[16] Having reviewed the Tribunal's substantive costs decision, and its response to Mr Koyama's recall application, and in the absence of any submissions to the contrary, I find no reason not to accept the submissions of Mr Collins on behalf of the respondent.

[17] Accordingly, Mr Koyama's appeal is declined.

[18] The respondent is entitled to scale 2B costs for a half day appeal.

"Clifford J"

Counsel:
P Collins, Barrister, Auckland.

Copy to:
Mr T Koyama, Dunedin.