

IN THE COURT OF APPEAL OF NEW ZEALAND

**CA118/2015
[2015] NZCA 186**

BETWEEN MALCOLM EDWARD RABSON
Appellant

AND REGISTRAR OF THE SUPREME
COURT
First Respondent

MINISTRY OF JUSTICE
Second Respondent

Counsel: Appellant in person
K Laurenson for Respondents

Judgment: 21 May 2015 at 11:30 am
(On the papers)

JUDGMENT OF RANDESON J

- A The application for a review of the Registrar’s decision dated 29 April 2015 declining to dispense with security for costs is dismissed.**
- B Security for costs of \$5,880 must be paid no later than 30 June 2015.**
- C The time for filing the case on appeal and to apply for the allocation of a hearing date is extended to 30 June 2015.**
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REASONS

Background

[1] The appellant Mr Rabson is seeking a review under r 7(2) of the Court of Appeal (Civil) Rules 2005 of a decision by the Registrar of this Court declining an application to dispense with security for costs.

[2] Mr Rabson seeks to appeal against a judgment of Mallon J delivered on 9 March 2015.¹ In that judgment, the High Court struck out Mr Rabson's application for judicial review brought against the Registrar of the Supreme Court. The focus of Mr Rabson's claim relates to an email from the Supreme Court on 14 August 2014 advising that the Court had directed that an application for recall of a Supreme Court decision raised no new matters and was dismissed.²

[3] In striking out Mr Rabson's judicial review proceeding, Mallon J determined that there was no jurisdiction to entertain the proceeding. The essential reasoning of the Judge is captured in these two paragraphs:

[10] The claim does not seek to review the Supreme Court's decision to decline to recall their judgments. Rather the claim is directed at the Registrar's actions in failing to record the Supreme Court's decision in accordance with legal requirements. Those requirements are said to arise under the Public Records Act 2005 and the common law.

[11] The immediate difficulty with the claim is that the Registrar acts for the Supreme Court in maintaining the record of that Court's proceedings. In doing so the Registrar acts under the supervision of the Judges who comprise the Supreme Court. If the Registrar's actions can be reviewed, any such review is by that Court and not this one. Mr Rabson's claim must be struck out on this basis as there is no jurisdiction to entertain it.

(Footnotes omitted)

The Registrar's decision

[4] The reasoning of the Registrar of this Court in declining Mr Rabson's application to dispense with security for costs is summarised:

¹ *Rabson v Registrar of the Supreme Court* [2015] NZHC 403.

² The application for recall related to a decision of the Supreme Court dated 14 July 2014 (*Rabson v Chapman* [2014] NZSC 90) in which the Court declined to review a decision made by Glazebrook J to adjourn Mr Rabson's application for leave to appeal against a judgment of this Court in *Rabson v Chapman* [2014] NZCA 158.

- (a) Mr Rabson had not provided evidence of his financial situation in support of his application.
- (b) The fact that he had been granted a waiver of fees is not conclusive evidence of impecuniosity and, in any event, impecuniosity alone did not warrant dispensation from the requirement to pay security for costs.
- (c) There was no merit in the proceeding having regard to the High Court's conclusions.
- (d) There was no wider public interest in the appeal and no other exceptional circumstances justifying dispensation.
- (e) In terms of *Reekie v Attorney-General* a solvent appellant, when faced with incurring the expense of legal representation, would not pursue a hopeless appeal.³
- (f) It was not right to require the respondents to defend the judgment under challenge without the usual protection of security for costs.

Grounds for review

[5] Mr Rabson challenged the Registrar's decision on three grounds:

- (a) The Registrar's statement that security for costs would only be dispensed with where she was of the view that it was right to require the respondent to defend the judgment under challenge without the usual protection as to costs provided by security was unlawful.
- (b) It was wrong for the Registrar to restrict access to the Court by relying on the High Court finding that there was no jurisdiction to consider the claim.
- (c) The Registrar's reference in her decision to other unsuccessful applications made in various courts was irrelevant and unjust.

³ *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737.

[6] Mr Rabson submitted that the claim sought to challenge an order of the Supreme Court Registrar prohibiting public access to the public records of the court and was important for that reason.

Discussion

[7] I am satisfied that the Registrar's decision declining to dispense with security for costs was correct for the reasons she gave. Mr Rabson's first ground of review was raised by him in an earlier application for review and rejected.⁴ His second ground of appeal has no substance. The Registrar's function under the Court of Appeal (Civil) Rules requires the Registrar to consider the prospects of success of the appeal as confirmed by the Supreme Court in *Reekie*. This necessarily forms part of the assessment as to whether a reasonable and solvent litigant would proceed with an appeal that was hopeless. Addressing Mr Rabson's third ground of review, the fact that there have been previous unsuccessful applications in various courts may form part of the Registrar's overall assessment of the merits where relevant.

[8] The short point here is that, for the reasons Mallon J gave, Mr Rabson's appeal has very little prospect of success. Of particular relevance is the judgment of the Supreme Court in *Mafart v Television New Zealand Ltd*.⁵ As Mallon J noted, the High Court's jurisdiction in judicial review is part of that Court's supervisory jurisdiction over inferior courts and tribunals. The idea that the High Court could review a decision of the Registrar of a higher court would appear to be contrary to principle.

[9] I note too that the Supreme Court has recently rejected an application by Mr Rabson seeking leave to appeal to the Supreme Court directly from Mallon J's judgment.⁶ The Supreme Court recorded that it had declined an application in almost identical circumstances in its decision in *Siemer v Registrar of the Supreme Court*.⁷ In delivering its decision in *Siemer v Registrar of the Supreme Court*, the

⁴ *Rabson v Registrar of the Supreme Court* [2015] NZCA 129 at [9].

⁵ *Mafart v Television New Zealand Ltd* [2006] NZSC 33, [2006] 3 NZLR 18 at [18] applied in *Siemer v Registrar, Supreme Court* [2014] NZHC 1179.

⁶ *Rabson v Registrar of the Supreme Court* [2015] NZSC 55.

⁷ *Siemer v Registrar of the Supreme Court* [2014] NZSC 100.

Supreme Court said the procedural question could be avoided by direct application to the Supreme Court for a review of a decision made by the Registrar of that Court.

Result

[10] The application for a review of the Registrar's decision dated 29 April 2015 declining to dispense with security for costs is dismissed.

[11] Security for costs of \$5,880 must be paid no later than 30 June 2015.

[12] The time for filing the case on appeal and to apply for the allocation of a hearing date is extended to 30 June 2015.

Solicitors:
Crown Law Office, Wellington for Respondents