

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA547/2023
[2024] NZCA 79**

BETWEEN	ABDULLAH ROBERT BOYD Appellant
AND	AUSTRALIAN FEDERAL POLICE First Respondent
	NEW SOUTH WALES LEGAL AID Second Respondent
	NEW ZEALAND DEFENCE FORCE Third Respondent
	NEW ZEALAND POLICE Fourth Respondent
	ATTORNEY-GENERAL Fifth Respondent
	OFFICE OF THE INSPECTORATE Sixth Respondent
	CANTERBURY INTELLIGENCE TEAM Seventh Respondent
	MINISTRY OF HEALTH Eighth Respondent

Court: Gilbert, Ellis and Wylie JJ

Counsel: Appellant in person

Judgment: 26 March 2024 at 2 pm
(On the papers)

JUDGMENT OF THE COURT

The appeal is struck out.

REASONS OF THE COURT

(Given by Gilbert J)

[1] Mr Boyd is serving a lengthy sentence of imprisonment for serious sexual offending.

[2] On 20 July 2023, Mr Boyd filed a “statement of claim” in the High Court at Christchurch naming the respondents as defendants. His claim set out various unparticularised allegations, some of which related to his arrest by the Australian Federal Police in Australia in June 2013, his relocation to New Zealand with the assistance of the New Zealand Defence Force in January 2015, and his subsequent treatment by other state actors in New Zealand. His claims included assertions of psychological torture and denial of protections assured under the New Zealand Bill of Rights Act 1990 and international legal conventions.

[3] The Registrar at the Christchurch High Court considered that the proceeding was plainly an abuse of court processes in terms of r 5.35A(1) of the High Court Rules 2016. The Registrar accordingly referred the matter to Churchman J for consideration of appropriate directions under r 5.35B, including whether the proceeding should be struck out.

[4] The Judge considered there were multiple fundamental deficiencies apparent on the face of the claim such that allowing the matter to proceed would bring the administration of justice into disrepute.¹ The Judge therefore made an order under r 5.35B striking out the proceeding as an abuse of process.²

¹ *Boyd v Australia Federal Police* [2023] NZHC 2358 [High Court judgment] at [24].

² At [25].

[5] Mr Boyd has appealed against that decision.

[6] On 25 October 2023, Mallon J declined Mr Boyd’s interlocutory application for the appointment of amicus curiae and a six-month stay of his appeal.³ The Judge directed Mr Boyd to file by 16 November 2023 any submissions or other material explaining why his appeal should not be struck out. The Judge also made a direction that the issue of strike-out be dealt with on the papers.

[7] Mr Boyd applied to the Supreme Court for leave to appeal against Mallon J’s decision. Leave to appeal was declined by the Supreme Court on 7 February 2024.⁴

[8] Mr Boyd was granted an extension of time until 9 February 2024 for filing his submissions, which he abided by. The question of whether the appeal should be struck out has been referred to us to determine on the papers.

[9] Rule 44A(1) of the Court of Appeal (Civil) Rules 2005 relevantly provides:

44A Court’s power to strike out or stay appeal

(1) In addition to any express power in these rules to strike out an appeal, the Court may, on an interlocutory application or on its own initiative, make an order striking out or staying an appeal in whole or in part if—

...

(c) the appeal is frivolous, vexatious, or otherwise an abuse of the process of the Court.

[10] The statement of claim filed in the High Court is helpfully brief, comprising 17 short paragraphs. The first three paragraphs describe Mr Boyd. The next eight paragraphs describe each of the respondents in turn and their involvement with Mr Boyd. By way of illustration, the fourth and ninth paragraphs read:

4) The First Defendant is The Australian Federal Police, and who on the 23-6-2013 arrested and detained the Plaintiff, on a Provisional Arrest Warrant, knowingly, that it was invalid, with errors and deficiencies, breaching the Extradition Act-1988, and the Search and Surveillance act.

³ *Boyd v Australian Federal Police* [2023] NZCA 517.

⁴ *Boyd v Australian Federal Police* [2024] NZSC 4.

...

- 9) The Six Defendant is The Office of The Inspectorate, who denied The Plaintiff protections governed within the “Inspections Standards”, and The Crimes of Torture Act, by leaving The Plaintiff in the hands of abusers of Psychological Torture, on The Plaintiff, effectively denying The Plaintiff the Rights of Natural Justice within New Zealand.

[11] Having described each of the parties in this manner, the remaining six paragraphs read as follows:

- 12) The Plaintiff will be requesting Leave from The Court, to further amend the Plaintiffs Statement of claim.
- 13) Often Victims of Torture suffer from elevated rate of anxiety, depression, adjustment disorders, P.T.S.D, DESNOS (Disorders of Extreme Stress Not Otherwise Specified).
- 14) Rehabilitation and Redress are part of the Rights of the victim of Torture, under The United Nations Convention, and within The International bill of human Rights.
- 15) The Plaintiff brings To The Courts attention The Evidence Act, s18 (Hearsay evidence).
- 16) The Plaintiff requests by way of Oral Interim Orders from The Court, relating to an Legal Hold to be placed onto the Plaintiff, so that the Plaintiff will remain in Christchurch at
- 17) The Plaintiff now wishes to say to the Court, Salam Alaikum (Peace be unto you).

[12] Mr Boyd’s submissions to this Court suffer from similar deficiencies to his statement of claim.

[13] We intend no disrespect to Mr Boyd, who is unrepresented, in saying that his proceeding was correctly struck out as an abuse of process. There are fundamental deficiencies with the document he has filed and the claims he seeks to advance.

[14] It is elementary that the High Court has no jurisdiction to entertain claims against the Australian Federal Police for actions taken by them in Australia. The same applies to the second respondent, assuming this is even an entity capable of being sued.

[15] There are also obvious impediments to the pursuit of money claims arising out of events that took place more than six years ago, outside the limitation period.

Mr Boyd's claims relating to his arrest in June 2013 and his removal to New Zealand in January 2015, however they might be characterised, are untenable for this reason.

[16] These sorts of problems would not have been sufficient to justify striking out the whole claim under r 5.35B because those parts could be excised from the claim. However, there is a much more fundamental problem which means that no part of the claim can survive. Mr Boyd has failed to plead any facts that could support any cause of action known to the law against any of the respondents. Moreover, no relief is sought against any respondent that could connect to any such cause of action. Indeed, no substantive relief is sought against any respondent. The closest Mr Boyd got to this is his statement of claim was his allegation in paragraph 14 that rehabilitation and redress form part of the rights of victims of torture. In his submissions, he stated that the striking out by the High Court had denied him redress and rehabilitation. However, he does not articulate the nature of rehabilitation and redress he is claiming, nor the legal basis on which he may be entitled to it.

[17] We do not overlook that Mr Boyd asks in paragraph 16 for "Oral Interim Orders" for a "Legal Hold" to be placed on him so that he remains in Christchurch. It is unclear what this is intended to achieve given that Mr Boyd has been sentenced to imprisonment. However, what is clear is that no such interim order could be made in the context of this civil proceeding.

[18] The statement of claim is so deficient that none of the respondents can reasonably be expected to respond to it. We are satisfied that the Judge was correct to strike out the claim in exercise of the powers conferred on him under r 5.35B of the High Court Rules. The proceeding is plainly an abuse of process, and this appeal must be struck out. It is the court's duty to protect its processes from this type of abuse and to ensure that scarce court and judicial resources are not wasted.

Result

[19] The appeal is struck out.