IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CIV-2022-485-134
[2022] NZHC 1161

BETWEEN	CATHERINE SIXTUS First Applicant
	KIRI CAMPBELL Second Applicant
AND	JACINDA ARDERN First Respondent
	KRIS FAAFOI Second Respondent
	ANDREW LITTLE Third Respondent
	ASHLEY BLOOMFIELD Fourth Respondent

Hearing:	23 May 2022
Appearances:	First applicant in person P J Gunn and R M McMenamin for the Respondents
Judgment:	24 May 2022

JUDGMENT OF COOKE J
(Strike-out)

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[1] By interlocutory application dated 19 May 2022 the respondents apply to strike out the applicants' statement of claim under r 15.1 of the High Court Rules 2016 on the basis that the statement of claim discloses no reasonably arguable case, that it is likely to cause prejudice and that it is vexatious. The application is opposed by the applicants.

Background

[2] The applicants' statement of claim was filed and served in March 2022. The nature of the claim advanced is not clear, but it is apparent that it is a claim for declaratory relief. The declarations sought are pleaded in the following terms:

> 1. Do pray A declaration to consolidate the 1865–1908 native rights Acts and including a new declaration to deem European progeny and Native ma-ori progeny, posterities and New Zealand people - to be deemed to be natural-born subjects of (H)er Majesty Queen Elizabeth II of United Kingdom and Ireland as it pleased Almighty God.
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>   And to declare that the Native AB-original "will" of 1865 and European Ancient "will" of 1688 English speakers of New Zealand to (t)heir progeny be protected by the Queens Courts of Law to continue to extend over the persons and properties of all Her Majesty's subjects within New Zealand.
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> 2. Do pray A declaration to the affect clearly stating the applicants' Ancient 1688 subject right under Almighty God exists pursuant to s 28 Other rights and freedoms not affected of the 1990 New Zealand bill of right ordinary law, without ordering any specific action pursuant to section 2 of the Declaratory Judgements Act 1908.
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> 3. Do pray A declaration to the affect that when two subordinating laws (1993 electoral Act 55 (b)(c) and 55 AA) conflict each other with both an argument for the declaration of indubitable and progeny right that pleased Almighty God and an argument for the declaration of inconsistency fundamental right.
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>   Which right shall be deemed, and taken to be allowed?
>
>   Which declaration whatsoever shall serve their Majesties for all times to come?
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> 4. Do pray A declaration that every particular of the New Zealand parliament, including High Courts and all Ministers to dispense with laws and exercise of late in clear language and particularly 1688 Subjects Bill of Rights New Zealand or 1990 New Zealand Bill of Rights or "Fundamental Bill of Rights New Zealand" and to avoid the confusion that has been cruelly and deceptively dispensed of late:
>
> So help me God

[3] The proceedings were first called before Palmer J on 2 May who recorded the Crown's view that the statement of claim was unintelligible and should be repleaded. Ms Sixtus submitted that the applicants had done quite a good job in their pleadings and that they stood by them. But Ms Sixtus advised that she was prepared to work with someone from the Crown to tidy up the claim. Palmer J recorded that the Crown would engage with the applicants to see if the claim could be tidied up, but also that

the Crown was likely to apply to strike out the proceedings and that the proceedings should be called before the Duty Judge in the week of 23 May.

[4] The claim has not been amended. A meeting did occur between the Crown Law Office and Ms Sixtus concerning this proceeding. Ms Sixtus is critical of counsel in relation to that meeting. She also says that litigants in person should be accorded latitude, and it is not appropriate for the claim to be struck out.

[5] In the meantime Ms Sixtus and other applicants sought to file a further proceeding which was referred to Palmer J under r 5.35A of the High Court Rules. By minute dated 18 May he struck out that further proceeding under r 5.35B. He said:

> I am satisfied this proceeding is plainly an abuse of the process of the Court. It does not adequately identify the decision that is challenged, the legal grounds of challenge or a proper declaration of legal right. The applicants need to take legal advice about how to frame their concern in a way which is recognised in law. It would be unfair to the respondent to require a response to this proceeding as it currently stands. I strike out the proceeding.
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> I also note that I enquired of the applicants about the relationship between these proceedings and proceedings brought by some of the same applicants in *Sixtus v Ardern* (CIV-2022-485-134). The applicants have clarified that these proceedings are separate but advised that they would apply for consolidation of the proceedings.

[6] The Crown has now applied to strike out this proceeding as anticipated. The applicants earlier filed an 11 page memorandum responding to the Crown's criticism of the claim which includes a list of grievances which Ms Sixtus explained were to form part of the claim.

[7] The proceedings came before me as Duty Judge on 22 May, and I heard the respondents' application at the end of the list.

Relevant strike-out principles

[8] Rule 15.1 provides:

> **15.1 Dismissing or staying all or part of proceeding**
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> (1) The court may strike out all or part of a pleading if it—
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> (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.

…

[9] In the present case the respondents say that the claim is unintelligible and raises no proper matters to which the respondent can meaningfully respond.

[10] The Court has jurisdiction to strike out a claim that is unintelligible and lacks a proper foundation. Amongst the circumstances in which claims have been struck-out under r 15.1 are pleadings that are unintelligible or which set out excessive evidential matters.[1] Such proceedings can also be struck out through the procedure contemplated by rr 5.35A and 5.35B, and occasionally also under the inherent jurisdiction. Under r 5.35B proceedings can be struck out if it would be manifestly unfair to the respondents that they be required to plead, and if right thinking people would regard the Court as exercising very poor control of its processes if it were to accept the pleading.[2] If a proceeding is fundamentally defective for these reasons it can be struck-out on application under r 15.1 as well as under r 5.35B.

[11] Distilling the principles from the authorities it seems to me that the Court should strike-out a claim when the pleadings are so unintelligible that it would not be appropriate to require a response to them. If the deficiencies can potentially be remedied by amendment then it would be appropriate to give the applicant/plaintiff the opportunity to re-plead. But if it is apparent from the nature of the claim that no appropriate cause of action or other claim is capable of being identified then the Court should strike-out the proceeding. This power should only be used sparingly in light of the fundamental right of access to the Court. But the rights of parties responding to litigation must also be respected. It is unjust to compel a party to respond to a proceeding that is unintelligible, and is not capable of repair.

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1 *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* [2013] NZCA 53, [2013] 2 NZLR 679 at [89]–[91],

2 *Mathiesen v Slevin* [2018] NZHC 1032, (2018) 25 PRNZ 16 at [6].

Arguments

[12] Mr Gunn accepted that the applicants were genuinely concerned about aspects of New Zealand law and that their grievances were deeply felt. He also accepted that they were not lawyers and that some latitude was appropriate. The problem was, however, that there needed to be some proper case advanced to respond to, and the pleadings fell well short of that here. He argued that the Crown must have a reasonable idea about what the case is about, and that the relief sought was something the Court had jurisdiction to grant. This was not the case here. He accepted that a further adjournment could be granted to give a further opportunity to remedy the deficiencies, but he said that the deficiencies were fundamental.

[13] Ms Sixtus contended that the claim was an appropriate one to bring. She relied on the observations of Elias CJ in *Attorney-General v Taylor* that that there did not need to be consequences for legal interests before a Court could make a declaration.[3] She said that the applicants' legal strategy initially focused on a declaration that would "consolidate" legislation passed in 1865 and 1908, and that after that initial step the other aspects of the claim could be addressed. Those other aspects included challenge to a number of Government initiatives which, she argued, were being introduced in a way that amounted to psychological "water boarding". She confirmed that amongst those complaints were those listed as grievances in her earlier memorandum which, by way of summary, included complaints about:

(a) The Marsden Point Refinery.

(b) The entry of the Government into the United Nations Declarations of Rights of Indigenous People.

(c) The Government's Three Waters proposals.

(d) Certain allegations made by Judith Collins.

(e) What is described as "50 per cent unelected Maori Parliament".

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3 *Attorney-General v Taylor* [2018] NZSC 104, [2019] 1 NZLR 213 at [95].

(f) Allegations concerning the New Zealand health system and health department, and the dividing up of it in accordance with race.

(g) The establishment of two Mormon temples which was endangering the safety of the protestant religion.

(h) The teaching of false history education and non-heterosexual promotion to children.

(i) The taking of farmland and strict regulation of natural areas under the Resource Management Act.

(j) The disarming of protestants of their firearms.

(k) The Terrorism Act 2020.

(l) The Sustainable development goals as required by the United Nations.

(m) An allegation concerning Lexis Nexis.

Analysis and decision

[14] I accept Ms Sixtus' point that the jurisdiction of the Court to make declarations is a broad one, and that it is not necessary for there to be legal consequences before declarations can be made.[4] But there must nevertheless be some issue about a matter of law, to which the declaration is directed, that is identified in the pleadings before the Court.

[15] Here there are two interrelated, and fundamental, problems with the pleaded claim which I do not accept can be remedied by amendment.

[16] The first point is that the allegations are unintelligible. It is not possible from a reading of the statement of claim to understand what allegations are being advanced in relation to particular rights or other legal matters, and what it is that has led to a relevant issue about them. The allegations in the statement of claim are very broad,

4 See *Mandic v The Cornwall Park Trust Board* [2011] NZSC 135, [2012] 2 NZLR 194 at [5]–[9].

and it does not identify particular disagreements or uncertainties in relation to matters of law that would be capable of being the subject of a declaration. The applicants' memorandum responding to the criticisms, and the oral arguments advanced by Ms Sixtus, did not make the position any clearer. I accept Mr Gunn's point that the pleaded claim is unintelligible. That is essentially the same conclusion that Palmer J reached in relation to the related proceeding in *Moore v Faafoi* which were struck out on 18 May under r 5.35B.

[17] Secondly, to the extent that it is possible to discern the allegations made, many are not within the jurisdiction of the Court. The matters listed as grievances referred to in paragraph [13] above involve matters of policy, and some involve criticisms of Parliamentary enactments. That is so in relation to the first declaration that Ms Sixtus advised was being sought which seeks a "consolidation" of two ancient statutes. This is referred to in the first declaration sought in the statement of claim. Such matters are not within the jurisdiction of the Court. The grievances involve political issues, and debates on matters of policy. The Court is concerned with questions of law, and to resolving genuine disagreements or uncertainties on the meaning and effect of legislation or other legal instruments or questions. It does not have jurisdiction to determine questions of policy.

[18] These deficiencies are not capable of being remedied by amendment. The deficiencies are too fundamental. An opportunity was earlier afforded to review the pleading, but Ms Sixtus had made it clear that the key allegations currently outlined are the basis of the claims. I see no prospect of the deficiencies being remedied.

[19] For these reasons the proceedings are struck out as an abuse of process.

[20] The respondents would normally be entitled to costs, and it is appropriate for parties to proposed litigation to understand that there are usually costs consequences of bringing proceedings that are found to be an abuse of process. If the respondents seek costs from the applicants counsel may file a memorandum within 10 working days, which can be responded to by the applicants within a further 10 working days.

Cooke J