

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

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

**CIV-2021-485-146
[2021] NZHC 703**

BETWEEN TAIMING ZHANG
Plaintiff

AND DISTRICT COURT AT WELLINGTON
Defendant

CIV-2021-485-147

BETWEEN TAIMING ZHANG
Plaintiff

AND DISTRICT COURT AT WELLINGTON
Defendant

On the papers

Judgment: 31 March 2021

JUDGMENT OF ISAC

Introduction

[1] Mr Zhang presented for filing in the Wellington Registry two bundles of papers intended to be proceedings against the abovenamed defendant. They have been given separate Registry numbers, being CIV-2021-485-146 and CIV-2021-485-147. Both intended proceedings relate to an application by Mr Zhang to commence private prosecutions in the District Court against two proposed defendants, Mr Andrew Kibblewhite and Ms Susan Wojcicki. For ease of reference I will refer in this judgment to the two proceedings as the Kibblewhite and the Wojcicki proceedings respectively.

[2] On 24 February 2021 the Registrar declined to accept the bundles of documents for filing. Mr Zhang has applied to review the Registrar's decision and both proceedings have been referred to me under r 5.35B of the High Court Rules 2016.

The proceedings

The Kibblewhite proceeding

[3] The papers presented for filing by Mr Zhang are largely unstapled.¹ On examination it is apparent they are intended to comprise 19 separate documents, nearly all of which begin with a covering page with the words:

Form G 1

General heading for documents filed in proceeding.

[4] Nearly all of the 19 documents appear to be intended to form evidence which Mr Zhang presumably wishes to rely on in support of his claim.

[5] The proceeding is brought as an application for review under the Judicial Review Procedure Act 2016. The named defendant is the District Court at Wellington. Beyond these observations, ascertaining the nub of Mr Zhang's case is difficult. The opening three paragraphs of the statement of claim are in these terms:

1. There are 2 types of civil review. One is of a decision that a reasonable person could understand why it was done in the way it was done. The other is where the original decision is so daringly ridiculous that one must assume it's of a comedy piece had they not seen a stamp or seal from the government. This case is of the latter. Specifically, **the latter often involves changing the facts or accusation or saying something that evidence already proves to be false**, and of course that's exactly what W K Hasting's decision on Kibblewhite is.

For the latter type of civil review, the NUMBER 1 recommended thing for court is not even to ask the applicant why they disagree, but simply to review what was submitted in the first place, in this case the charging statement and charging document. And evidence as well.

2. First of all, I dispute at all my formal statement filed is not as the Criminal Procedure Act requires. It clearly is as it fits the requirement of the Criminal Procedure Act. Further, the Evidence Act does not require every criminal exhibit comes with a signature. Thus the whole notion of how I

¹ With two exceptions, the notice of proceeding is stapled to an application for waiver of filing fees. The statement of claim was also stapled when received by the Registry.

did not file a formal statement and exhibits is disputed. If W K Hastings denies my filing merely because it doesn't look like what a public prosecutor would file in form, whilst my filing complies with all relevant laws, he would have obstructed justice.

3. Then, comes the perverting. The accusation was all stored electronic information was denied on the national level. OIA 84091 was filed as part of the evidence. In OIA 84091, it is admitted that current MoJ policy is ALL stored electronic information is denied. ALL. It is also notable that my accusation against Kibblewhite is the Ministry blocks all stored and recorded electronic information on the national level, with evidence proving that that certainly is the case with the entire Wellington District Court. An email from Auckland District Court is even in the evidence. But in the decision, it became a "complaint" of a single case where they didn't accept a "CD". This kind of obstruction of justice by W K Hastings is certainly criminal in my opinion.

[6] Amongst other things alleged in the statement of claim it is said:

- (a) the course of justice is the proceeding of justice, not the result.²
- (b) A decision of the District Court declining Mr Zhang leave to commence a private prosecution against the Secretary for Justice, Mr Andrew Kibblewhite, is "defamatory, stinking and ill-intended".³
- (c) An extraordinary remedy is sought: "I ask for a declaration of breach of duty, as that statement is as ludicrous as it is."⁴ It is not clear whose breach of duty the declaration is directed at.
- (d) "Several miscellaneous matters" are pleaded over several pages although Mr Zhang notes that they are called miscellaneous "because they won't change this case, but are worth discussing."⁵

[7] Amongst the unstapled papers filed with the statement of claim is a decision of Judge Hastings, issued on the papers on 18 January 2021.⁶ It provides some light as to the background which has led to this application for review. Mr Zhang sought to commence a private prosecution in the District Court against the Secretary of Justice.

² Statement of claim at [4].

³ Statement of claim at [14].

⁴ Statement of claim at [16].

⁵ Statement of claim at [17].

⁶ *Zhang v Kibblewhite* DC Wellington, 18 January 2021.

A charging document filed by Mr Zhang alleged that he has due cause to suspect that Mr Kibblewhite has committed an offence against the Crimes Act 1961, namely that Mr Kibblewhite has attempted to pervert the course of justice. The Judge summarised Mr Zhang's proposed prosecution in these terms:⁷

The proposed prosecutor wishes to prosecute Andrew Kibblewhite after a Court Registry Officer rejected an evidence bundle contained on a CD Rom due to the Court's inability to access information and submitted on CD Rom by Mr Zhang. Mr Zhang also complains that the Court requires electronic files that exceed 20 pages to be filed in hard copy because the Court is not in a position to print large bundles of files.

[8] Having reviewed the material Mr Zhang had filed, Judge Hastings concluded that the charging documents should not be accepted for filing because "the evidence provided is insufficient to justify a trial."⁸ Mr Zhang's proceeding is therefore intended to challenge the District Court's decision declining to accept the charging document for filing.

The Wojcicki proceeding

[9] The numerous papers presented for filing in relation to this proceeding are again almost entirely unstapled except for the notice of proceeding.⁹ Despite the lack of stapling, it appears there are a total of 22 separate documents within the bundle.

[10] The statement of claim again names the Wellington District Court as a defendant. And, again, the underlying complaint appears to be a decision of the District Court of 18 January 2021 declining to accept for filing a charging document in support of a private prosecution by Mr Zhang of a Ms Wojcicki, who Mr Zhang understands to be resident of the United States of America. The proposed private prosecution is for murder and manslaughter.

[11] Once again it is difficult to discern with any clarity what the proposed case is about. The best assessment I can make is that Mr Zhang wishes to bring a private prosecution against the intended defendant for murder and manslaughter because (presumably the intended defendant) removed several videos from YouTube.

⁷ At [2].

⁸ *Zhang v Kibblewhite* DC Wellington, 18 January 2021, at [19].

⁹ A consistent feature with the *Kibblewhite* proceeding.

Mr Zhang appears to consider that removing the videos from the internet will cause some people to die or become ill.

[12] Overall, it is virtually impossible to work out what Mr Zhang's proposed proceeding is all about.

Jurisdiction

[13] Rule 5.35B provides:

5.35B Judge's powers to make orders and give directions before service

- (1) This rule applies if a Judge to whom a Registrar refers a proceeding under rule 5.35A is satisfied that the proceeding is plainly an abuse of the process of the court.
- (2) The Judge may, on his or her own initiative, make an order or give directions to ensure that the proceeding is disposed of or, as the case may be, proceeds in a way that complies with these rules, including (without limitation) an order under rule 15.1 that—
 - (a) the proceeding be struck out:
 - (b) the proceeding be stayed until further order:
 - (c) documents for service be kept by the court and not be served until the stay is lifted:
 - (d) no application to lift the stay be heard until the person who filed the proceeding files further documents as specified in the order (for example, an amended statement of claim or particulars of claim).
- (3) Rule 7.43(3) does not apply. However, if a Judge makes an order on the Judge's own initiative without giving the person who filed the proceeding an opportunity to be heard, the order must contain a statement of that person's right to appeal against the decision.
- (4) A copy of a Judge's decision to strike out a proceeding must, if practicable, also be served on the person named as a party or, if more than 1 person is named, those persons named as parties to the proceeding.
- (5) *See* rule 2.1(3)(b) concerning the exclusion of the jurisdiction and powers of a Judge under this rule from the jurisdiction and powers of an Associate Judge.

[14] As a consequence of s 8(2) of the Judicial Review Procedure Act 2016, r 5.35B applies to an application for review. The right to bring judicial review is a fundamental

right, recognised by s 27(2) of the New Zealand Bill of Rights Act 1990. But the right to bring a review proceeding is to do so “in accordance with law”.¹⁰

[15] The power to strike out proceedings under r 5.35B is to be exercised sparingly.¹¹ The following questions are asked when the rule is applied:¹²

- (a) whether it would be manifestly unfair to the respondents that they be required to respond; and
- (b) whether right thinking people would regard this Court as exercising very poor control of its processes for it to follow the applicant’s document to be treated as a proper document.

Analysis

Kibblewhite case

[16] I am satisfied Mr Zhang’s proceeding is plainly an abuse of process of the Court and that the answer to the questions at [15(a) and (b)] above is “yes”.

[17] The statement of claim is so wholly deficient that it is incapable of resuscitation by amendment. It contains no cause of action. The pleading fails to clearly identify a decision or the exercise of a public power which is the subject of review. It fails to identify with any clarity the ground or grounds of review. And while it seeks a form of relief, it is not possible to ascertain the precise nature of the relief sought or against whom it is intended to bite. And given the tone and nature of much of what is alleged, I consider right thinking people would regard this Court as exercising very poor control of its processes were Mr Zhang’s bundle of papers to be treated as a proper document.

¹⁰ *Siemer v Registrar of Supreme Court* [2019] NZHC 2345 at [5] and [15].

¹¹ *Siemer* at [6].

¹² *Mathieson v Fildes* [2017] NZHC 2258 at [4]–[7]; *Mathieson v Slevin* [2018] NZHC 1032 at [6]; *Siemer v Registrar of Supreme Court* [2019] NZHC 2345 at [6].

[18] The balance of the papers appear to be intended to constitute some form of evidence or submissions in support of the proceeding, but they are diffuse, unsworn and do not comply with the requirements for evidence under the High Court Rules.

[19] I therefore make an order under r 5.35B striking out Mr Zhang's Kibblewhite proceedings.

Wojcicki case

[20] The proposed statement of claim in this proceeding is even more malformed than the other. It does not contain a cause of action or prayer for relief. It is largely incomprehensible. Once again the Court would be exercising poor control of its processes if it allowed the proceedings to continue, which would require the defendant to respond through the Court process.

[21] Again, I am satisfied that the requirements for striking out this proceeding under r 5.35B are met by a clear margin. Accordingly, it is struck out.

[22] Mr Zhang has a right of appeal against this decision.

[23] I direct that a copy of this judgment is to be served on the respondent.

Isac J

Copies to:
Applicant
District Court, Wellington