

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

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**CIV-2020-404-568  
[2020] NZHC 1013**

BETWEEN DERMOT GREGORY NOTTINGHAM  
Applicant

AND JACINDA ARDERN, ASHLEY  
BLOOMFIELD AND SARAH STUART-  
BLACK  
Respondents

Hearing: On the papers

Counsel: Applicant self-represented  
A M Powell and V McCall for Respondents

Judgment: 15 May 2020

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**JUDGMENT OF PETERS J**

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This judgment was delivered by Justice Peters on 15 May 2020 at 2.30 pm  
pursuant to r 11.5 of the High Court Rules

Registrar/Deputy Registrar

Date: .....

Solicitors: Crown Law Office, Wellington

Copy for: Applicant

[1] Mr Nottingham has applied for recall of my judgment of 23 April 2020, in which I declined his application for a writ of habeas corpus pursuant to the Habeas Corpus Act 2001 (“Act”).<sup>1</sup> The respondents oppose the application for recall.

[2] The gist of Mr Nottingham’s application is that Crown counsel misled me at the hearing of his application on 17 April 2020. In particular, Mr Nottingham contends Crown counsel misled me in the course of their submissions as to the legality or otherwise of the (now revoked) order of the Director-General of Health issued on 3 April 2020 (“order”). Crown counsel deny misleading me in any way whatsoever.

[3] Although Mr Nottingham sought a hearing on his application, I am satisfied I can deal with it on the papers.

[4] Mr Nottingham and Crown counsel made detailed submissions for and against the application for recall. However, the critical point is that my judgment has been subject to a concluded appeal, that is the Court of Appeal has both heard and determined Mr Nottingham’s appeal against my judgment.<sup>2</sup> The effect of this is to preclude recall of my judgment.<sup>3</sup>

[5] Quite aside from that, and even if Mr Nottingham could persuade me I was misled as he contends, I would have declined to exercise my discretion to recall the judgement because it would be pointless to do. The matters on which Mr Nottingham seeks to rely do not bear on the determinative issue of whether the effect of the order was to “detain” him within the meaning of the Act. Thus the outcome post any recall would remain the same.

## **Result**

[6] I dismiss the application for recall accordingly.

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Peters J

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<sup>1</sup> *A v Ardern* [2020] NZHC 796. Mr Nottingham’s application is dated 11 May 2020.

<sup>2</sup> *A v Ardern* [2020] NZCA 144.

<sup>3</sup> *Redcliffe Forestry Venture Ltd v Commissioner of Inland Revenue* [2011] 1 NZLR 336 (HC), (2010) 24 NZTC 24,079 at [12]; *Commissioner of Inland Revenue v Redcliffe Forestry Venture Ltd* [2012] NZSC 94, [2013] 1 NZLR 804 at [41]; and *Ben Nevis Forestry Ventures Ltd v Commissioner of Inland Revenue* [2014] NZCA 350, (2014) 26 NZTC 21-086 at [35].