

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA622/2017  
[2018] NZCA 280

BETWEEN                      FREDRICK HILL  
   Applicant  
  
AND                                MĀORI TRUSTEE  
   Respondent

Hearing:                      11 June 2018  
  
Court:                            Winkelmann, Clifford and Williams JJ  
  
Counsel:                      Applicant in Person  
   C M Reuhman for Respondent  
  
Judgment:                      31 July 2018 at 4 pm

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**JUDGMENT OF THE COURT**

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- A     The Māori Trustee’s application for strike-out is, by consent, declined.**
- B     Mr Hill’s application for an extension of time to apply for the allocation of a hearing date and to file the case on appeal is granted.**
- C     Mr Hill is to file his case on appeal by Friday 17 August 2018. Provided Mr Hill does so, the Registrar is then to set the appeal down for hearing at the first available opportunity.**
- D     Security for costs is to be determined in accordance with [21] of this judgment.**
- E     There is no order for costs.**
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## REASONS OF THE COURT

(Given by Clifford J)

### Introduction

[1] This is an application by the Māori Trustee to strike out an appeal commenced by Mr Hill. Mr Hill opposes that application, and at the same time applies for extensions of time within which to file his case on appeal and to apply for his appeal to be set down. The Māori Trustee opposes those applications.

### Background

[2] Mr Hill and the Māori Trustee have been involved in a long-running dispute over land Mr Hill leased from the Māori Trustee in 2006. In 2015 the Māori Trustee obtained judgment against Mr Hill in the District Court for damages of some \$87,500 for breach of that lease, plus costs.<sup>1</sup> Mr Hill unsuccessfully challenged that judgment in the High Court and this Court.<sup>2</sup>

[3] In August 2016 the Māori Trustee issued a bankruptcy notice against Mr Hill for that judgment debt. In November of that year Mr Hill challenged that bankruptcy notice. That challenge was dismissed by Associate Judge Smith on 29 September 2017.<sup>3</sup>

[4] Mr Hill filed a notice of appeal against Associate Judge Smith's decision in this Court on 30 October 2017.

[5] Security for costs was set at \$6,600. Mr Hill unsuccessfully applied to the Registrar for security to be dispensed with. He then applied for that decision to be reviewed. In a judgment of 16 February 2018 Brown J declined that application, and extended the time for payment to 9 March 2018.<sup>4</sup>

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<sup>1</sup> *Māori Trustee v Hill* DC Palmerston North CIV-2011-054-533, 23 February 2015.

<sup>2</sup> *Hill v Māori Trustee* [2016] NZHC 364; and *Hill v Māori Trustee* [2016] NZCA 487.

<sup>3</sup> *Māori Trustee v Hill* [2017] NZHC 2377.

<sup>4</sup> *Hill v Māori Trustee* [2018] NZCA 17.

[6] Mr Hill did not pay that security. The Māori Trustee applied to strike out Mr Hill's appeal. In a minute of 3 May 2018, setting that application down for hearing at the next available date, French J drew Mr Hill's attention to his need to apply for an extension of time to file the case on appeal and to seek a hearing date for the appeal by 22 May 2018.<sup>5</sup>

[7] Mr Hill made such an application on 22 May 2018, and at the same time filed a notice of opposition to the Māori Trustee's strike-out application.

[8] These applications were set down to be heard before us on 11 June 2018.

### **The hearing**

[9] As matters transpired, shortly before that hearing Mr Hill filed a copy of a letter he had received from Legal Aid Services which, Mr Hill advised Ms Reuhman (counsel for the Māori Trustee), established that he had been granted legal aid for his appeal. When Ms Reuhman addressed the Court, she advised us of that fact. She also advised us that, in light of that development, she would not pursue her client's strike-out application.

[10] Ms Reuhman, we infer, adopted that course of action in light of r 36 of the Court of Appeal (Civil) Rules 2005. Rule 36 provides:

**36 Security for costs: legal aid**

- (1) This rule applies to every appeal in which the appellant has applied for, or been granted, legal aid at the time the appeal is brought.
- (2) An appellant who has been granted legal aid at the time the appeal is brought does not need to pay security for the respondent's costs in the Court.

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<sup>5</sup> Given Mr Hill had filed his notice of appeal on 30 October 2017, he had been required to take those steps by 22 February 2018. As he had not done so, his appeal was deemed abandoned on that day by virtue of r 43(1) of the Court of Appeal (Civil) Rules 2005. Rule 43(3) allows this Court to grant extensions of time to take those steps, provided the relevant application is made no later than three months after the date of deemed abandonment. As can be seen, the effect of r 43(1) here was to deem Mr Hill's appeal abandoned before the time had expired for him to provide security for costs. That is anomalous, but of no particular significance here as Mr Hill never provided that security.

- (3) An appellant whose application for legal aid has not been determined at the time the appeal is brought does not need to pay security for the respondent's costs in the Court while that application is pending.
- (4) As soon as the application is determined, the appellant must promptly give the Registrar and the respondent written advice of the outcome.
- (5) If the application is granted, the appellant does not need to pay security for the respondent's costs in the Court.
- (6) If the application is declined, rule 35 applies to the appeal with the following (and any other necessary) modifications:
  - (a) the time specified in rule 35(3) within which the appellant must pay to the Registrar security for the respondent's costs in the Court is 20 working days after the date on which the appellant's application for legal aid is declined; and
  - (b) the time specified in rule 35(7)(a) within which an application to the Registrar may be made for the making of an order under rule 35(6) is 20 working days after the date on which the appellant's application for legal aid is declined.

[11] Although the factual position was not clear, we understood Ms Reuhman to have proceeded on the basis that, although Mr Hill had not applied for legal aid at the time his appeal was brought, the reason for that may have been difficulties he had encountered in finding a lawyer to represent him. Given that he had overcome those difficulties, and been granted legal aid, he had — as it were — rectified that situation and at least for the time being brought himself within the spirit, if not the letter, of r 36.

[12] The hearing therefore focussed on Mr Hill's extension applications, and the Māori Trustee's continued opposition to them.

### **Submissions**

[13] Mr Hill's argument was simply that the issue of security for costs now having been addressed, there was no reason in principle why his appeal should not proceed. The delay in filing the case, and applying to have the appeal set down, had arisen when, as he was entitled, he had challenged the requirement for security. Moreover, any delays in the grant of legal aid were not attributable to him.

[14] Ms Reuhman, in opposing, emphasised the very long time this dispute had been at large: the current application simply reflected Mr Hill's unreasonable stance in that

dispute. There was a judgment in favour of the Māori Trustee to be enforced. There was no merit in the challenge to the Associate Judge's ruling. The matter should be brought to an end, and Mr Hill's applications dismissed.

### **Subsequent inquiries**

[15] In light of the generous approach Ms Reuhman took to the strike-out application, we endeavoured at the hearing to clarify with Mr Hill the details of what he said was his now successful application for legal aid. We were not able to do that satisfactorily. We therefore asked Mr Hill to file copies of correspondence that would show when he had made his application for legal aid, and the terms upon which it had been granted. Mr Hill also agreed that, if we considered it appropriate, we could approach Legal Aid Services directly for clarification of any matters involved.

[16] Legal Aid Services have now confirmed that:

- (a) Mr Hill applied for legal aid on 24 May 2018, with assistance from Ms Rebecca Stoop.
- (b) On 31 May 2018 Legal Aid wrote to Ms Stoop in the following terms:

Dear Miss Rebecca Stoop

#### **About your client's legal aid application**

We have now received a reply from our Specialist Advisor Team.

We confirm that legal aid is available for this matter. However, we cannot yet grant legal aid for this Court of Appeal matter as you do not have a Court of Appeal listing.

To overcome this, you will need to nominate a lead provider to supervise you, who has both a [C]ourt of Appeal listing and a civil legal aid listing. Otherwise, you can apply to [legalaidprovider@justice.govt.nz](mailto:legalaidprovider@justice.govt.nz) for a temporary one-off listing for [C]ourt of Appeal matters in order to deal with this application only.

Please advise your course of action as soon as possible, or by 15 June 2018.

- (c) Notwithstanding the advice “legal aid is available”, the letter of 31 May 2018 was not a grant. But on 11 July 2018, Legal Aid Services confirmed an interim grant had been made to, as we understand matters, enable an approved lawyer to provide initial advice to Mr Hill.

[17] We proceed on that factual basis.

### **Analysis**

[18] We have considerable sympathy for the position taken by Ms Reuhman on behalf of the Māori Trustee in opposing Mr Hill’s extension applications. That is, considerable time has now passed since the Māori Trustee obtained judgment against Mr Hill in the District Court, and there appears to be little merit in Mr Hill’s ongoing challenge to that judgment.

[19] However, in light of the interim grant Mr Hill has now received, the pragmatic approach which we adopt is:

- (a) with the consent of the Māori Trustee, and in light of the information conveyed to the Māori Trustee at the hearing and the subsequent confirmation of an interim grant of legal aid, to decline the Māori Trustee’s strike-out application at this time; and
- (b) to grant Mr Hill an extension of time within which, with the benefit of his interim grant of legal aid, to file his case on appeal and to apply to have that appeal set down for hearing.

[20] Given the time that has now passed, and what in our preliminary view is the lack of any obvious merit in Mr Hill’s appeal, Mr Hill must file his case on appeal by 10 August 2018. Provided Mr Hill does so, the Registrar is then to set the appeal down for hearing at the first available opportunity.

[21] As to security for costs, and by analogy with r 36(2) and (6):

- (a) if Mr Hill is granted legal aid to bring his appeal, that is if the interim grant is confirmed, r 36(2) will, in line with the approach taken by the Māori Trustee, be deemed to apply; but
- (b) if Mr Hill is not granted legal aid to bring his appeal, r 36(6)(a) will be deemed to apply, requiring Mr Hill to pay the originally ordered security for costs within 20 working days after the date of the relevant decision of Legal Aid Services.

[22] The costs of these applications are to lie where they fall.

### **Result**

[23] The application for strike-out is, by consent, declined.

[24] The application for an extension of time to apply for the allocation of a hearing date and to file the case on appeal is granted.

[25] Mr Hill is to file his case on appeal by Friday 17 August 2018. Provided Mr Hill does so, the Registrar is then to set the appeal down for hearing at the first available opportunity.

[26] Security for costs is to be determined in accordance with [21] of this judgment.

[27] There is no order for costs.

Solicitors:  
Te Tumu Paeroa, Wellington for Respondent