

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA397/2018
[2019] NZCA 186**

BETWEEN DWAYNE RUSSELL WARAKIHI MAAKA
 SMYTH-DAVOREN
 Appellant

AND ELIZABETH II ALEXANDRA MARY
 MOUNTBATTEN (BORN WINDSOR)
 Respondent

Court: Brown and Courtney JJ

Counsel: Appellant in person
 V McCall for Respondent

Judgment: 27 May 2019 at 11.00 am
(On the papers)

JUDGMENT OF THE COURT

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

REASONS OF THE COURT

(Given by Brown J)

[1] The appellant applies under r 43(2) of the Court of Appeal (Civil) Rules 2005 (the Rules) for an extension of time to apply for the allocation of a hearing date and to file the case on appeal.

Background

[2] In two proceedings brought by the appellant against a party described as “Elizabeth II Alexandra Mary Mountbatten (born Windsor)” Whata J issued a minute on 25 June 2018 making the following orders:¹

- (a) an order striking out proceeding CIV-2018-419-174;
- (b) an order staying proceeding CIV-2018-419-178 pending Crown Law identifying the appropriate defendant or defendants in the proceeding and the appellant then filing an amended pleading substituting the names of the persons who should properly be named as defendant(s).

[3] The Judge described the 174 proceeding in this manner:

[2] The statement of claim in proceeding 0174 seeks, it appears:

- [i] a declaration affirming 34 rights at law;
- [ii] orders relating to the plaintiff’s legal status;
- [iii] orders relating to the status of another identified person;
- [iv] orders relating to the plaintiff’s entitlements;
- [v] a specific order requesting enrolment in a theology course;
- [vi] orders “to let out of prison, Ngatata Love, based on the given alleged facts of the plaintiff’s opinion of the imprisonment, decoding of legal documents and acceptance of money”.

[3] There is a supporting affidavit of “sovereignty.” The plaintiff deposes, among other things:

[I] am a natural, freeborn sovereign individual, without subjects. I am neither subject to any entity anywhere, nor is any entity subject to me. I neither dominate anyone, nor am I dominated.

I am not a “person” as defined in “statutes” or “New Zealand Legislation(s)” when such definition includes “artificial entities”. I refuse to be treated as a “federally” or “state”, of New Zealand Government, or British Crown, created entity. Which is only capable of exercising certain rights, privileges, or immunities. As specifically “granted” by “federal”, or “state” “governments”. Or New Zealand Government.

¹ *Smyth-Davoren v Mountbatten (Born Windsor)* HC Hamilton CIV-2018-419-174, 25 June 2018 (Minute of Whata J).

I may voluntarily choose to comply with the “laws”, New Zealand Government, which others attempt to impose upon me, but no such “laws”, New Zealand Government, nor their “enforcers”, have any authority over me. I am not in any “jurisdiction”, for I am not of subject status.

[4] The Judge concluded that the pleadings were largely incoherent and an abuse of process. They did not clearly identify any fact, principle or rule of law that might enable the Court to make the various declarations and orders sought.²

[5] Without commenting on the merits of the 178 proceeding, the Judge stated that it was sufficiently legible to proceed in the usual way subject to the named defendant being amended.³

The application for an extension of time

[6] On 16 July 2018 the appellant filed a notice of appeal against those orders. However he failed to file the case on appeal or apply for a hearing date within the three month period specified in r 43(1) of the Rules. Consequently his appeal was deemed abandoned on 17 October 2018. On 16 November 2018 the appellant filed the application for an extension of time the subject of this judgment.

Relevant principles

[7] The principles applicable to an application for an extension of time under r 43 are essentially the same as those explained by the Supreme Court in *Almond v Read* relating to applications under r 29A of the Rules for leave to file appeals out of time.⁴ The ultimate question when considering the exercise of the discretion is what the interests of justice require. Factors identified as likely to require consideration included:⁵

- the length of the delay;
- the reasons for the delay;

² At [6].

³ At [9].

⁴ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [35]–[40].

⁵ At [38].

- the conduct of the parties, particularly of the applicant;
- any prejudice or hardship to the respondent or to others with a legitimate interest in the outcome; and
- the significance of the issues raised by the proposed appeal, both to the parties and more generally.

[8] While the Court recognised that the merits of a proposed appeal may, in principle, be relevant to the exercise of the discretion to extend time, a decision to refuse an extension of time based substantially on that ground should be made only where the appeal is clearly hopeless. Examples include where the appeal could not possibly succeed, where there is an abuse of process or where the appeal is frivolous and vexatious. The lack of merit must be readily apparent.⁶

Discussion

[9] The explanation provided by the appellant for his failure to comply with the r 43 prescribed timeframe is:

I have been exhausted worrying about my rights, my titles and my recompensation claims and my inheritance claims. From the law and New Zealand Government, and from the New Zealand Courts. The jurisdiction of the High Court of New Zealand at Hamilton (a Court of General Jurisdiction), and the jurisdiction of the Court of Appeal of New Zealand (a Court of Record and a Court administering the common law, thus all courts in New Zealand have Stare Decisis whether binding or persuasive precedents/cases), and as stated in my proceedings (CA397/2018) (CIV02018-419-174) (CIV 02018-419-178). My exhausted worrying about my rights, titles and my recompensation claims and my inheritance claims, are related in contents and meanings in my stated proceedings, including this herein court form my exhausted worrying is merciless. I have included in my Statement of Claim documents stated here, if not my Notice of Appeal CA397/2018, I request my claims/documents be sent to the Supreme Court of New Zealand, in order for my claims/reliefs to be granted to me. I do not believe I should be worrying, not after what I have communicated to the courts stated, and government stated here.

⁶ At [39(c)].

[10] This reason is essentially similar to that advanced in support of applications made by the appellant in other matters in this Court, either for leave to appeal under r 29A⁷ or for an extension of time under r 43(2).⁸

[11] In addition to the application, the appellant filed further documents on the following days intended for reference to the Court:

- 20 March 2019
- 25 March 2019
- 26 March 2019
- 29 March 2019
- 1 April 2019
- 4 April 2019

[12] None of this substantial volume of material appears to be directed to the application for an extension of time. In the main it is incoherent. It is similar in that respect to the 29 page notice of appeal, a bizarre document in which the appellant describes himself as a “freeman” but concludes with the repeated assertion that he is an ape, that apparently being relevant to his mode of communication.

[13] In a measured memorandum in opposition counsel for the defendant submits that the merits of the appeal are extremely weak, drawing attention to the conclusion of Williams J, in his decision on an application for review of a Registrar’s decision declining to dispense with security for costs, that “the appellant has no prospects of success in this appeal.”⁹

[14] We agree with the respondent’s submission. We consider that the appeal is frivolous and vexatious. It should not be further prolonged by an extension of time.

⁷ *Smyth-Davoren v Parker* [2019] NZCA 181.

⁸ *Smyth-Davoren v Parker* [2019] NZCA 139.

⁹ *Smyth-Davoren v Mountbatten (born Windsor)* [2018] NZCA 524 at [8].

Result

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

Solicitors:
Crown Law Office, Wellington for Respondent