

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA523/2018
[2019] NZCA 139**

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|---------|-------------------------------------------------------------|
| BETWEEN | DWAYNE RUSSELL WARAKIHI MAAKA SMYTH-DAVOREN Applicant |
| AND | DAVID PARKER First Respondent |
| | JACINDA ARDERN Second Respondent |
| | ANDREW LITTLE Third Respondent |

Court: Brown and Gilbert JJ

Counsel: Applicant in person
V McCall for Respondents

Judgment: 6 May 2019 at 11.30 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 applicant applies under r 43 of the Court of Appeal (Civil) Rules 2005 for an extension of time to apply for the allocation of a hearing date and to file the case on appeal.

Background

[2] On 27 August 2018 the applicant filed a notice of appeal against an order that the applicant's proceeding in the High Court against David Parker, Jacinda Ardern and Andrew Little be struck out. In her minute of 21 August 2018 Katz J observed that, while it was somewhat difficult to decipher the applicant's intended causes of action in his proceeding, it was clear that the proceeding did not disclose a cause of action justiciable in the High Court.¹

[3] Rather the proceeding relating to issues concerning the ownership of Māori land and associated entitlements. Pursuant to s 18 of Te Ture Whenua Maori Act 1993 issues relating to Māori land are justiciable in the Māori Land Court. Consequently the Judge ruled that the applicant should file his proposed proceeding in the Māori Land Court.

[4] The applicant 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 28 November 2018. Hence the present application for an extension of time.

Discussion

[5] 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 for leave to file appeals out of time.² The Court accepted that the merits of a proposed appeal may in principle be relevant to the exercise of the discretion to extend time but subject to three qualifications. With reference to the third qualification the Court said that a decision to refuse an extension of time based substantially on the lack of merit of a proposed appeal should be made only where the appeal is clearly hopeless.³ One example was where the Court lacks jurisdiction.

¹ *Smyth-Davoren v Parker* HC Hamilton CIV-2018-419-238, 21 August 2018 at [4].

² *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [35]–[40].

³ At [39(c)].

[6] While counsel for the respondents supported the High Court's finding, the very detailed submissions filed by the applicant did not engage with the issue of jurisdiction.

[7] In our view the Judge's conclusion that the issues raised in the applicant's claim are justiciable in the Māori Land Court was correct. Any appeal from the Māori Land Court lies to the Māori Appellate Court with a further right of appeal to this Court.

[8] It follows that the applicant's claim brought in the High Court was in the hopeless category, as is the appeal to this Court from the High Court's order striking out the proceeding.

Result

[9] 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 Respondents