NOTE: PURSUANT TO S 35A OF THE PROPERTY (RELATIONSHIPS) ACT 1976, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C AND 11D OF THE FAMILY COURT ACT 1980.

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA439/2020
[2021] NZCA 389

BETWEEN	YI HENG WU Applicant
AND	ZHAOHUA LI Respondent

CA695/2020

BETWEEN	ZHONGXIU FAN Applicant
AND	YI HENG WU First Respondent
AND	ZHAOHUA LI Second Respondent

Court:	Clifford and Gilbert JJ
Counsel:	Mr Wu and Ms Fan in person A M Corry for Ms Li
Judgment: (On the papers)	18 August 2021 at 2 pm

JUDGMENT OF THE COURT

A The application for recall of this Court's judgment delivered on 27 April 2021 is declined.

B The applicants are to pay one set of costs to Ms Li for a standard application on a band A basis and any usual disbursements.

REASONS OF THE COURT

(Given by Gilbert J)

[1] These proceedings involve a dispute about relationship property following the breakdown of a four-year marriage between Mr Wu and Ms Li. Ms Fan is Mr Wu's mother. She brought a separate claim contending that the relevant assets were held by her son on trust for her. Following a lengthy hearing in 2019, Gendall J dismissed Ms Fan's claim and largely upheld Ms Li's claims.[1] The Judge made orders to enable a final division of relationship property and for payment of occupation rent and child support. Nothing has been paid.

[2] On 1 December 2020, Ms Fan applied for an extension of time to appeal against the High Court's substantive judgment which had been delivered on 27 September 2019. In March 2021, Ms Fan also applied for a stay of execution of the substantive judgment, a costs judgment and subsequent enforcement orders pending appeal. Mr Wu made a separate (but identical) application for a stay of execution and for an extension of time to appeal against an order made by Gendall J on 23 July 2020 to facilitate a weathertightness report on the former family home to determine its value.

[3] These various applications were declined by this Court for reasons given in a judgment delivered on 27 April 2021.[2] This Court considered there had been no explanation for the extraordinary delay between the date of the substantive judgment (27 September 2019) and the date of the applications for an extension of time to appeal (1 December 2020). The delay had caused significant prejudice to Ms Li because the Court's orders had been ignored and she has been kept completely out of her entitlement.[3] Importantly, Ms Fan had failed to identify any reasonably arguable error in the substantive judgment, simply asserting that it "was made without any factual basis", was "wrongful" and "should be corrected".[4]

[4] Mr Wu and Ms Fan have now informally applied (by email) for recall of the judgment. They say they do not understand New Zealand law and thought a final

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1 *Li v Wu* [2019] NZHC 2461.
2 *Wu v Li* [2021] NZCA 137.
3 At [13].
4 At [12].

judgment is not "handed down" until it has been sealed. This is why they say they missed the deadline for filing an appeal to this Court. They ask this Court to "take this case seriously" and recall the judgment.

[5] Ms Li opposes the application. She notes that Mr Wu and Ms Fan have sought leave to appeal to the Supreme Court and submissions in respect of that application have been filed. An affidavit has been filed on Ms Li's behalf showing that Ms Fan and Mr Wu, who were separately represented by two different firms of lawyers in the High Court, were still being represented by those lawyers during the appeal period following the substantive judgment of the High Court.

[6] Subject to any appeal, a judgment or order must generally stand for better or worse and may only be recalled in limited circumstances falling into three categories — first, where since the hearing there has been an amendment to a relevant statute or regulation or new judicial decision of relevance and high authority; secondly, where counsel have failed to direct the Court's attention to a legislative provision or authoritative decision of plain relevance; and thirdly, where for some other very special reason justice requires that the judgment be recalled.[5] The first two of these categories do not apply here. Only the third category could be even arguably relevant in this case. However, no very special reason has been identified that could justify the judgment being recalled. In effect, the applicants simply ask that their applications be reconsidered afresh based on the same material originally supplied. That is not a proper basis for an application for recall. The application must accordingly be declined.

Result

[7] The application for recall of this Court's judgment delivered on 27 April 2021 is declined.

[8] The applicants are to pay one set of costs to Ms Li for a standard application on a band A basis and any usual disbursements.

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5 *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC) at 633.

Solicitors:
Lincoln Law, Lincoln for Ms Li