

**IN THE HIGH COURT OF NEW ZEALAND
PALMERSTON NORTH REGISTRY**

CIV-2009-454-255

BETWEEN JAMES ROBERT REID
 Applicant

AND DEPUTY REGISTRAR AT
 PALMERSTON NORTH
 Respondent

Hearing: 30 June 2009

Counsel: J R Reid (In Person) Applicant
 T Warburton and D Constantine for Respondent

Judgment: 30 June 2009

JUDGMENT OF JOSEPH WILLIAMS J

This judgment was delivered by the Hon. Justice Joseph Williams
on 30 June 2009 at 4.00pm
pursuant to r 11.5 of the High Court Rules

Registrar/Deputy Registrar
Date:

[1] Mr Reid issued proceedings by way of judicial review against the Tararua District Council designed to prevent the Council's Hearing Committee proceeding to hear submissions on the proposed Tararua District Plan. He applied to the Deputy Registrar at Palmerston North pursuant to regulation 6 of the High Court Fees Regulations 2001 to waive the \$400 filing fee.

[2] Mr Reid alleged, and the Deputy Registrar accepted, that the subject matter of the application was of genuine public interest in accordance with regulation 6(2)(b)(i). He also alleged that the proceeding would not be commenced

or continued unless the fee was waived in accordance with regulation 6(2)(b)(ii). He said that he had “limited resources”. The Deputy Registrar did not accept that submission and instead requested that Mr Reid provide details of his financial circumstances. Mr Reid refused and the Deputy Registrar declined the waiver application.

[3] Mr Reid then appealed. Hugh Williams J dismissed the appeal on the basis that the onus was on Mr Reid to demonstrate that the proceeding was unlikely to be commenced or continued without waiver and he had failed to demonstrate this.

[4] Mr Reid now seeks leave to appeal that decision.

[5] In the meantime, an application was made by the Tararua District Council to strike out the judicial review application on the basis that the substantive argument was untenable.

[6] In a written decision dated 19 June 2009, Miller J struck out the substantive proceeding.

[7] Predictably Mr Reid has filed a joint appeal directly to the Court of Appeal both in respect of the decision of Miller J and that of Hugh Williams J.

[8] The Crown argues that the application for leave to appeal the decision of Hugh Williams J must be dismissed. Two submissions are made:

- (a) The Court has no jurisdiction to grant leave to appeal;
- (b) The substantive proceedings have been struck out and the issue is now moot.

[9] Dealing with the second argument first, I do not accept that the issue of Mr Reid’s liability to pay the filing fee is removed as a result of Miller J’s decision to strike out the substantive proceeding. On the face of it, Mr Reid is liable to pay the fee once the proceeding is filed unless that fee is waived in the manner already described. The strike out decision does not change that.

[10] Thus, while the substantive proceeding has been struck out, Mr Reid's liability to pay the fee is not at all moot.

[11] The Crown must succeed on the first argument however. I only have jurisdiction to grant leave to appeal to the Court of Appeal where a statute or the High Court Rules give me that jurisdiction.

[12] Section 100B of the Judicature Act 1908 makes provision for review of Registrar's decisions concerning fees. There is no reference in that section to further appeal to the Court of Appeal by leave. Section 67 provides a pathway to the Court of Appeal by leave but that is only on a matter the High Court has itself heard on appeal from an 'inferior court'. That section does not appear to apply in this case because the Deputy Registrar is not an inferior court as defined in s 2 of that Act.

[13] There is then only s 66 in respect of the jurisdiction of the Court of Appeal to hear and determine appeals from any "judgment, decree, or order" of the High Court. It may be that these words found a right of appeal for Mr Reid in this case but that is a matter for the Court of Appeal, not for me.

[14] I must therefore dismiss Mr Reid's application for leave to appeal on the basis that I have no jurisdiction to grant such an order.

“Joseph Williams J”

Solicitors:
John R Reid, 2 Vogel Street, Woodville
Crown Law Office, Wellington