IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 111/2021
[2021] NZSC 158

BETWEEN	KELLY ALEXANDRA ROE Applicant
AND	NEW ZEALAND VICE-CHANCELLORS COMMITTEE Respondent

SC 106/2021

BETWEEN	KELLY ALEXANDRA ROE Applicant
AND	UNIVERSITY OF AUCKLAND Respondent

SC 109/2021

BETWEEN	KELLY ALEXANDRA ROE Applicant
AN	AUCKLAND DISTRICT HEALTH BOARD Respondent

APPLICATION FOR LEAVE TO APPEAL

Filed by Kelly Alexandra Roe, 5 December 2021

[1] I am applying for leave to appeal the Supreme Court Judgment:

KELLY ALEXANDRA ROE v NEW ZEALAND VICE CHANCELLOR'S COMMITTEE [2021] NZSC 158 [15 November 2021]

On the grounds that it is **manifestly unjust** or a **miscarriage of justice** as things stand with the judgment.

[2] The Judgment professes to be not merely a judgment of two decisions of Brown J pertaining to Roe v NZVCC but, additionally, judgments of two additional decisions of Brown J and Wylie J in matters of Roe v University of Auckland and Roe v ADHB on grounds that it is 'convenient' to deal to them all together.

Roe v University of Auckland

[3] Ms Roe has filed with the Court of Appeal all of the documents that she was required to file to have the case heard on appeal within the 20 days she had to file such things without an extension of time. That is to say, she filed the notice of appeal. She filed an application for waiver of filing fee (that was approved). She filed an application for hearing that was approved (but a date was not set). She filed an application for waiver of hearing fee that was accepted. She has also applied for the substantive judgment and the costs judgment associated with the same High Court Proceedings to proceed together or to be heard together. The only thing left to happen before the case/s were heard on appeal was for Ms Roe to pay security for costs that the court had set at $7,060 – or obtain dispensation from the courts for security for costs to be waived.

[4] That is to say, the only thing holding up or preventing the case from being heard on appeal is that Ms Roe had not paid $7,060 to the Courts.

[5] Ms Roe cannot pay $7,060 to the courts. She does not have the money to pay $7,060 to the courts.

[6] Instead of the courts refusing to hear the case on appeal on the grounds that or for the reason that Ms Roe could not afford to pay $7,060 to the courts for the case to be heard on appeal (which would obviously be unjust), the Courts said they would grant her extension of time after extension of time after extension of time so she could persuade the courts that there was merit to the case that she brought before the courts.

[7] Wylie, J then refused to dispense with security for costs on the grounds that or for the reason that the case (as pre-judged prior to a substantive hearing) was not of public interest and had no merit.

[8] Ms Roe attaches to this document evidence that she cannot pay the fee.

(a) Her application for Legal Aid (attesting to her financial position)

(b) Her bank account statement (attesting to SLP as primary source of income and lack of savings)

(c) A letter from Work and Income (attesting to SLP as primary source of income).

[9] Refusing to allow the case to be heard on appeal amounts to refusing or denying justice to Ms Roe on grounds that or for reason that she cannot pay the fee.

[10] That is paradigmatic of a miscarriage of justice. Ms Roe was only required to suffer delay after delay after delay (being required to file for extension after extension after extension) because she could not afford to pay the fee. Justice delayed is justice denied. Justice is being delayed and denied to

Ms Roe in the court of appeal because she cannot pay the fee.

[11] They say it is because she has failed to establish the case has merit or is of public interest – but that is passing judgment on the case before a substantive hearing. It is a denial or refusal of justice to pass judgment on the case before a substantive hearing in the Court of Appeal.

[12] Ms Roe is being denied justice because she cannot pay the fee. The Supreme Court has only compounded the injustice by prematurely judging the case to lack merit and by awarding further costs against Ms Roe.

[13] I am seeking the Supreme Court accept the evidence that Ms Roe has supplied to the Supreme Court as evidence that Ms Roe cannot pay the fee and instruct them to allow the case to proceed to be heard on appeal so as to prevent a miscarriage of justice. No judicial reasoning was given by the Supreme Court for them to have awarded $2,500 in costs against Ms Roe to the University of Auckland because Ms Roe asked the Supreme Court to overturn the Judgments of the Court of Appeal to prevent the Court of Appeal from hearing the case on Appeal, effectively, because Ms Roe cannot afford to pay security for costs. The University of Auckland could have prevented the case from progressing through the courts at all if only they had have accepted the evidence Ms Roe supplied of her qualification completion and calculated her GPA same as everyone else. And then offered (or declined her a place) according to her correctly calculated rank order score that they published for the purposes of accountability.

Roe v NZVCC

[14] There are two Judgments, here. One pertains to refusal to waive filing fee and the other pertains to refusal to dispense with security for costs. Again, Justice is being denied to Ms Roe as the case won't progress through the Court

of Appeal because it has been pre-judged that since she didn't pay the fee she was required to file for many many extensions while the Court of Appeal could repeatedly and contually find the case to be lacking in merit as a consequence of the fact that Ms Roe did not pay the fee. If she paid the fee then she would not be subjected to this process of applying for extensions and if she paid the fee she would not have to deal with the courts gaslighting her that the case lacked merit because she didn't pay the fee.

[15] The reason for declining waiver of filing fee in this case (where waiver of filing fee was approved in every other case) was because the Court of Appeal, in this case, decided that the 'recent' letter needed to have been supplied within the last three months and the letter that Ms Roe supplied was too old.

[16] Ms Roe requested to know why the Court of Appeal interpreted 'recent' as being within the last 3 months when surely what was relevant was that she was attesting to her circumstances not having changed. The court declined to see things that way and her application was declined.

[17] If the court of appeal has discretion to say 'three months' is recent perhaps they have discretion to say 'three weeks' is recent perhaps they have discretion to say 'three days' is recent perhaps they have discretion to say 'three hours is recent' perhaps they have the discretion to say 'three minutes is recent' perhaps they need to speak with someone on the phone else they will not accept evidence that a person is in receipt of a SLP which is to say they will not accept evidence that a person is eligible for a waiver of filing fee which is to say they will not progress any case unless a person pays the filing fee which is to say they deny justice to anybody who cannot pay the filing fee.

[18] It is manifestly unjust that the Court of Appeal refused to accept the evidence that Ms Roe was in receipt of an SLP for *Roe v NZVCC*. Particularly when precedent from the courts was that, in every other case she has filed

within the last couple years, she was in receipt of SLP and therefore eligible for waiver of filing fee on those grounds.

[19] And again with Ms Roe being required to engage in a process of being persuaded (by gaslighting) that she needed to apply for extension after extension after extension after extension for her filings while hearing over and over from the courts about how the case lacked merit and about how everything was all very particular and personal against Ms Roe and not a matter of public interest or of justice or fairness at all.

[20] The NZVCC has statutory function of upholding the quality and integrity of NZ University qualifications. Information that has been released by OIA post the High Court trial attests to the CE not having progressed any of the complaints that he has received since he took up the position in early 2014. That is to say the NZVCC refuses to listen or actually hear complaints about serous-wrongdoing within the Universities of NZ and do anything about them. That is to say the NZVCC dismisses the complaints rather than progressing them so that people have to go outside the NZVCC for justice. Either the CE needs to go (to be replaced by someone willing to work to uphold the quality and integrity of NZ Universities from within the NZVCC) else the Statutory function of them to uphold the quality and integrity of NZ Universities needs to be given to some other agency or authority. Either way, it's time for the CE of the NZVCC to go.

[21] If the courts refuse to allow a substantive hearing of *Roe v NZVCC* to progress through the court of appeal it will be a matter of considerable public interest to international students and also to New Zealanders who may be deciding whether they want to invest in tertiary education in NZ or whether the point or purpose of Tertiary Education in NZ is to force people to become destitute so that justice can more readily be denied to them.

[22] Ms Roe is asking the Supreme Court to overturn it's prior to decision to

uphold the Court of Appeal Judgments to decline the case from progressing to the Court of Appeal on grounds that Ms Roe did not supply evidence the court would accept that she was in receipt of SLP for waiver of filing fee and on grounds that the Court didn't get $7060 security for costs. It is a manifest injustice to decline to allow the merits of the case to be heard on appeal. It is a manifest injustice to award further costs of $2,500 to be awarded against Ms Roe when she wouldn't have needed to have taken the NZVCC to court, at all, if only they had have progressed the complaint that she made in accordance with the NZVCC policy in accordance with their statutory responsibility.

Roe v ADHB

[23] Ms Roe does find Mr Perkins submissions compelling that Rule 4 means that if a case is in fact struck out then the applicant can apply directly to the court of appeal without asking for leave. This is as opposed to meaning that anything pertaining to a strike-out application can be appealed, by any party, to the court of appeal, without asking for leave.

[24] On the other hand, it is so simple to say the former and so very much more difficult to say the later. If the rule meant to say the former (rather than the later) then why didn't the rule say the former? It didn't, though, it seemed genuinely ambiguous or inclusive whether it applied to a judgment that the proceeding be struck out or a judgment simply pertaining to an application to strike out. That is to say the people who write the rules are capable of writing very specific rules if that is what they intended I am sure they would have stated it more specifically.

[25] On the other hand, I am not sure that requiring me to ask for leave from the High Court is something that amounts to a denial or refusal of justice.

[26] I wondered why the High Court Judge made a costs award at the point

in the proceedings where there was an application to have proceedings struck out. I mean to say I don't know why judgment on costs wasn't reserved until the dealing was done (so to speak).

[27] I have seen some things suggesting that either (1) costs cannot be awarded to self-represented litigant else (2) self-represented litigant cannot be found to be substantively correct (because costs go to the substantively correct litigant but self-represented litigants cannot be awarded costs).

[28] I am not sure if it may be the case that lower courts feel bound by some kind of precedent by what I stated in paragraph 27 such that things need to escalate up to the Supreme Court for precedent so that they can possibly find me substantively correct and, if so, award me costs. Or whether they are prohibited from awarding me costs so they can only find against me.

[29] That is to say I wondered if the High Court Judgment meant to stop me or head me off at that early stage by showing me that there would be no justice for me in the courts of NZ because the ADHB filed a motion to have my proceedings struck out. My proceedings were not struck out. I was berated by the courts for the inadequacy of my filings. I can only imagine so that I would feel so ashamed of them that I would not realise that, in the matter of having my proceedings struck out, the ADHB was unsuccessful. That is to say, I am the substantively correct party in the proceedings insofar as matter of having the proceedings struck out. If the courts of New Zealand cannot understand that or handle that or deal with that or even so much as say 'each keep their own costs until the dealing is done and we see who is the substantively correct party at the end of the day' then there is no justice to be found in the NZ courts.

[30] I have written to the High Court asking permission for leave to be granted so the matter of motion to strike out (and associated costs) can be heard by the court of appeal. I was informed that I need to file this formally. I will do that. I think it is a grotesque injustice, again, that the Supreme Court now

awards $2,500 in costs against me because I protested that it was unjust that when the ADHB files a motion to have proceedings struck out and they are not struck out the ADHB wins costs.

[31] In summary:

I am requesting the Supreme Court reconsider the Judgment that was delivered 15 November 2021 as it amounts to a denial or refusal of justice on grounds that Ms Roe has not paid money to the courts. Ms Roe cannot pay money to the courts so it amounts to a denial or refusal of justice to Ms Roe on grounds that she cannot pay. That amounts to nothing other than a denial or refusal of justice.