

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA459/2021
[2021] NZCA 612**

BETWEEN KELLY ALEXANDRA ROE
 Applicant

AND UNIVERSITY OF WAIKATO
 Respondent

CA488/2021

BETWEEN KELLY ALEXANDRA ROE
 Applicant

AND UNIVERSITY OF WAIKATO
 Respondent

Counsel: Applicant in Person
 J A MacGillivray for Respondent

Judgment: 18 November 2021 at 10.30 am
(On the papers)

**JUDGMENT OF BROWN J
(Review of Deputy Registrar's decision)**

**A The application to review the Deputy Registrar's decision declining to
 dispense with security for costs is declined.**

B Security for costs of \$7,060 is payable by 9 December 2021.

REASONS

Introduction

[1] On 23 July 2021 Ms Roe filed an appeal against a judgment of the High Court dismissing her application for judicial review relating to the examination of her thesis by the respondent, the University of Waikato, and the outcome of that examination.¹ The High Court's subsequent costs judgment was the subject of a separate notice of appeal filed on 6 August 2021.² On 17 September 2021 it was directed that the appeals be heard together with only one payment of security for costs being required.

[2] Ms Roe applied under r 35(6)(c) of the Court of Appeal (Civil) Rules 2005 (the Rules) for dispensation from the requirement to pay security for costs, which had been fixed in the sum of \$7,060, on the ground that the substantive appeal involves a matter of considerable public interest. In a decision dated 22 September 2021 the Deputy Registrar declined the application for dispensation.

[3] Ms Roe now seeks a review of that decision.

The relevant principles

[4] The principles applicable to dispensation from security for costs were reviewed by the Supreme Court in *Reekie v Attorney-General*.³ The Court stated that the Registrar should dispense with security if of the view that it is right to require the respondent to defend the judgment under challenge without the usual protection as to costs provided by security.⁴ The Court explained:

[35] ... we consider that the discretion to dispense with security should be exercised so as to:

- (a) preserve access to the Court of Appeal by an impecunious appellant in the case of an appeal which a solvent appellant would reasonably wish to prosecute; and

¹ *Roe v University of Waikato* [2021] NZHC 1808 [Substantive decision].

² *Roe v University of Waikato* HC Hamilton CIV-2020-419-235, 30 July 2021.

³ *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737.

⁴ At [31].

- (b) prevent the use of impecuniosity to secure the advantage of being able to prosecute an appeal which would not be sensibly pursued by a solvent litigant.

A reasonable and solvent litigant would not proceed with an appeal which is hopeless. Nor would a reasonable and solvent litigant proceed with an appeal where the benefits (economic or otherwise) to be obtained are outweighed by the costs (economic and otherwise) of the exercise (including the potential liability to contribute to the respondent's costs if unsuccessful). As should be apparent from what we have just said, analysis of costs and benefits should not be confined to those which can be measured in money.

[5] The Court also ruled that the review function of the judge in relation to security for costs is to be exercised de novo.⁵

The Deputy Registrar's decision

[6] Having correctly cited the relevant principles from *Reekie*, the Deputy Registrar first recorded that Ms Roe did not claim to be impecunious and did not make her application on that ground. Instead her application was advanced on the basis that the appeal against the substantive decision is one of public interest.

[7] The Deputy Registrar rejected Ms Roe's submission that her substantive appeal involved a matter of considerable public interest, observing that the appeals turned on their particular facts given that the respondent's decision related to Ms Roe's enrolment and examination results. The Deputy Registrar saw little prospect of success in the appeals and did not consider that a reasonable and solvent litigant would proceed with them.

Discussion

[8] In support of the review Ms Roe explained that her appeal is "intertwined" with other litigation she has with New Zealand Vice-Chancellors Committee, contending that her treatment is not simply an issue between herself and the respondent but rather an issue with how all New Zealand universities treat their graduate research students. She suggested that her appeal will be of interest to domestic and international students when they are deciding whether they want to invest in a New Zealand university education.

⁵ At [23].

[9] In her submissions Ms Roe engaged at some length with the merits of her case, in particular the requirement that she re-enrol, stating:

This was not an academic decision. The University administration decided to demand (demand a bribe payment and an additional period of unpaid therefore slave labor) without academic grounds. They do this always. It is systematic. They believe they are entitled.

[10] She described the issue in this way:

16) The issue is what it is or means to have a degree from a NZ University. University administration thinks that all NZ University degrees are honorary degrees to be granted or withheld at the discretion of the University administration. That is to say they can decide whether you paid enough money to university editing services or whether you lived in your supervisors house for long enough. Whether you carried their groceries with joy on your face. Whether you did what they said when they said because they said. The University administration has total discretion to grant or withhold University Degrees quite aside from internationally accepted standards of scholarship.

[11] As I explained in a previous review sought by Ms Roe, the beliefs she holds concerning the practices of various academic institutions does not have the consequence of converting proceedings, that concern facts and processes that pertain only to her and her academic pursuits, into a broader issue of public interest.⁶ As the Supreme Court recently observed in relation to that case (and two others), they involved very particular litigation where the underlying disputes are personal to Ms Roe and do not raise issues of general or public importance.⁷

[12] Like the Deputy Registrar I do not regard her appeal as qualifying as genuine public interest litigation of the nature recognised in *Banks v Ports of Auckland Ltd*.⁸ Consequently there are no grounds on that account for dispensation from the requirement to pay security for costs.

[13] Notwithstanding that impecuniosity was not a ground for her application for dispensation, Ms Roe's submissions also stated that she does not have funds to pay security for costs. However she did not provide any details of her financial

⁶ *Roe v New Zealand Vice Chancellors Committee* [2021] NZCA 437 at [15].

⁷ *Roe v New Zealand Vice-Chancellors Committee* [2021] NZSC 158 at [5].

⁸ *Banks v Ports of Auckland Ltd* [2015] NZCA 150, (2015) 22 PRNZ 461.

circumstances in support of that contention. Indeed her submissions made it clear that she is opposed to doing so:

3) I am opposed to presenting my financial records to the court as I am opposed to presenting a film to the court of me doing various things in the bathroom or the bedroom. Privacy. There is nothing wrong with picking one's nose but there is something wrong with people forcing things like that to take up the time of the courts. I have attested to my financial position and there is no reason to think me a liar.

[14] Ms Roe's veracity is not the issue. There was simply no information in her application which would have provided a basis for dispensation on the grounds of impecuniosity.

Result

[15] The application to review the Deputy Registrar's decision declining to dispense with security for costs is declined.

[16] Security for costs of \$7,060 is payable by 9 December 2021.

Solicitors:
Tompkins Wake, Hamilton for Respondent