

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA: Nil
[2021] NZCA 441**

BETWEEN	KELLY ALEXANDRA ROE Applicant
AND	AUCKLAND DISTRICT HEALTH BOARD Respondent

Court: Clifford J

Counsel: Applicant in Person
No appearance for Respondent

Judgment: 7 September 2021 at 10.30 am
(On the papers)

**JUDGMENT OF CLIFFORD J
Review of Registrar's Decision**

The application for review of the Deputy Registrar's decision is declined.

REASONS

[1] This is an application by Ms Roe to review a decision of the Deputy Registrar declining to accept an appeal for filing on the basis that leave for that appeal first had to be applied for from the High Court.

Background

[2] On 12 February 2021, Ms Roe commenced proceedings in the High Court to judicially review actions of the Auckland District Health Board and certain of its personnel for events which occurred in September 2020. Ms Roe had voluntarily attended at the Emergency Department at Auckland Hospital. On the basis of her

presentation at that time the procedures of the Mental Health (Compulsory Assessment and Treatment) Act 1992 were invoked. Ms Roe claims that subsequent action breached various of her rights. By way of relief, Ms Roe seeks the removal from office of the Chief Executive of the Auckland District Health Board and the most senior clinician involved in the incident.

[3] The District Health Board applied to strike out Ms Roe's proceeding on the basis that the pleading disclosed no reasonably arguable cause of action, that the relief sought was beyond the power of the Court; and that the proceeding was an abuse of process. Wylie J declined that application but, agreeing with the District Health Board that Ms Roe's statement of claim was inadequate, required her to replead.¹ On the basis that the District Health Board had largely succeeded, its complaint all along having been the inadequacy of the pleading, the Judge awarded costs to the District Health Board payable by Ms Roe.²

[4] It is that costs order which Ms Roe seeks to appeal to this Court.

Analysis

[5] An application to strike out a proceeding is an interlocutory application. Section 56(3) of the Senior Courts Act 2016 relevantly provides:

- (3) No appeal, except an appeal under subsection (4), lies from any order or decision of the High Court made on an interlocutory application in respect of any civil proceeding unless leave to appeal to the Court of Appeal is given by the High Court on application made within 20 working days after the date of that order or decision or within any further time that the High Court may allow.

[6] Section 56(4) provides an exception to that rule: that is, a decision of the High Court striking out all or part of a proceeding, claim, or defence may be appealed from the High Court to this Court as of right.

[7] The District Health Board's strike out application was an interlocutory application. That application was declined. The order of costs against Ms Roe was

¹ *Roe v Auckland District Health Board* [2021] NZHC 1780 at [21] and [34]–[35].

² *Roe v Auckland District Health Board* [2021] NZHC 2162.

an order of the High Court made on that interlocutory application. The exception in subs (4) does not apply. Subsection (3) does apply.

[8] The Deputy Registrar declined to accept Ms Roe's notice of appeal because of the applicability of s 56(3).

[9] That decision was correct.

Result

[10] The application for review of the Deputy Registrar's decision is declined.