

**IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
KIRIKIRIROA ROHE**

CIV-2020-419-235

UNDER the Judicial Review Procedure Act 2016

IN THE MATTER OF an application for judicial review of
decisions

BETWEEN KELLY ALEXANDRA ROE
Applicant

AND THE UNIVERSITY OF WAIKATO
Respondent

Hearing: On the papers

Appearances: Applicant in person (via VMR)
J A MacGillivray and C S Frost for respondent

Minute: 30 July 2021

MINUTE OF TOOGOOD J
[As to costs]

Solicitors:
Tompkins Wake, Hamilton for respondent

Copy to:
The applicant

[1] On 16 July 2021, I issued a judgment dismissing Ms Roe’s application for judicial review of various decisions and alleged errors and omissions of the University of Waikato.¹ In the judgment I said:

[63] As the successful party, the University is entitled to an award of costs on a category 2B basis.

[64] If the parties cannot earlier agree on costs, the University shall file and serve any costs memorandum by *13 August 2021*. Ms Roe shall file and serve any costs memorandum in reply by *10 September 2021*. The costs memoranda shall not exceed three pages in length, excluding the intituling cover page and any annexed schedule of costs and documents related to disbursements. Unless the Court directs otherwise, costs shall be determined on the papers.

The University’s claim for costs and disbursements

[2] Counsel for the University have prepared a schedule of the costs claimed according to the categorisation of 2B costs under the High Court Rules 2016. I am satisfied that the claims accord with the schedule and are appropriate. The University also claims to recover its filing fees for the notice of opposition to an interlocutory application filed by Ms Roe and its statement of defence. It also claims \$107.99 for photocopying carried out in the New Zealand Law Society library. Mr McGillivray explains in his memorandum that the copying relates to the provisions of reported versions of cases that were included in the bundle of authorities but which were not available on the on-line databases.

Ms Roe’s submissions

[3] Ms Roe objects to payment of those copying costs, arguing that she does not accept that it was reasonable for the respondent’s counsel to invoice the sum claimed for searching “obscure cases located behind a pay-wall given high-quality free information that is not located behind a pay-wall. The respondent was not to write a research paper or a thesis to justify those research costs for a High Court proceeding”.

[4] I consider the copying costs to be reasonably claimable. While it may have been possible for counsel and for the Judge to obtain on-line access to those judgments through databases available to them, they would not easily have been available to

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

Ms Roe. Counsel for the University were obliged to disclose to her all of the relevant authorities upon which they relied, including any which may have been of assistance to her case of which they were aware. Moreover, it assists a trial judge to have a bound volume comprising all relevant authorities.

[5] I am satisfied that the disbursement claimed is reasonable and properly related to the conduct of the proceeding.

[6] Ms Roe does not argue that the costs claimed on behalf of the University do not accord with the High Court Rules. She suggests, however, that costs be allowed to lie where they fall "... until the case has been resolved through the court of appeal and supreme court and UN if NZ Universities and courts are some combination of unwilling and unable to accept evidence and hear reason". Ms Roe says that she does not wish to appeal a costs decision separately as she is attempting to keep costs down for the University.

[7] She then devotes six paragraphs of argument addressing the substantive judgment and saying why she considers it to be wrong.


Decision

[8] As the party that was successful in the proceeding, the University is entitled to its costs.² I have directed that they be fixed on a category 2B basis and the calculation of costs claimed by the University is correct. I have ruled that the disbursements claimed are reasonable.

[9] I appreciate that Ms Roe has a concern about filing a separate appeal against a costs judgment, if she is dissatisfied with it, but it is not appropriate for the respondent to have to wait for its costs pending the hearing of one or more appeals which Ms Roe may be contemplating. I am aware that she has filed a notice of appeal in the Court of Appeal against the substantive judgment. I invite Ms Roe to confer with counsel for the University about any intention to appeal this costs decision and how such an appeal might be accommodated within the current appeal proceeding.

² High Court Rules 2016, r 14.2(1)(a).

[10] The applicant shall pay the respondent the sum of \$20,793 in costs and \$327.99 in disbursements.



Toogood J