

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA479/2021
[2021] NZCA 627**

BETWEEN GEOFFREY ARTHUR KING
 First Applicant

AND ANTHEA ROSE KEENAN
 Second Applicant

AND RAYMOND BRUCE SMITH
 Respondent

Court: Miller and Collins JJ

Counsel: Applicants in person
 B M Russell and MDW King for Respondent

Judgment: 24 November 2021 at 2.00 pm
(On the papers)

JUDGMENT OF THE COURT

The application for an extension of time is granted.

REASONS OF THE COURT

(Given by Miller J)

[1] The applicants seek an extension of time under r 29A of the Court of Appeal (Civil) Rules 2005 to bring appeals against two High Court decisions, one substantive and the other for costs.

[2] The respondent is the Mayor of the Westland District Council. He has deposed to years of allegations made against him by Ms Keenan, joined by Mr King from

October 2018. Eventually he sued them in defamation, relying on only two publications to keep the proceeding within manageable limits. The sting of the defamation was that among other things he was dishonest and had abused his office.

[3] The applicants took no steps when served with the proceeding, and the substantive judgment was entered by way of formal proof.¹ Gendall J declared that both applicants were liable in defamation and liable for Mr Smith's reasonable solicitor-client costs.² The second judgment fixed the costs payable, \$32,667.74.³

[4] The substantive judgment was delivered on 31 May 2021, and the costs judgment on 29 June 2021. On 29 July 2021 the applicants moved for an extension of time to appeal against both decisions. Mr King has purported to abandon the application but no notice of abandonment has been filed, so we proceed on the assumption that his application remains live.

[5] The grounds for the application are difficult to follow. They begin with a complaint that the applicants were not given notice of the substantive fixture. That is misconceived; r 15.9(2) of the High Court Rules 2016 provides that no notice need be given to a defendant who has taken no steps following service of the proceeding. The applicants could move in the High Court under r 15.10 to set aside the default judgment, and that is the proper course of action should they complain about service of the proceeding.⁴

[6] However, the delay in seeking to file the appeals was very short. The application was filed 22 working days after the substantive decision, and only 13 working days after it was served on Ms Keenan. The appeal against the costs decision was only two working days late. So the applicants moved with reasonable dispatch after belatedly appreciating their legal jeopardy. The delay cannot have caused any

¹ High Court Rules 2016, r 15.9.

² *Smith v King* [2021] NZHC 1252 [Substantive judgment] at [45] and [49].

³ *Smith v King* [2021] NZHC 1557 [Costs decision] at [11].

⁴ *Walls v Ulsterman Holdings Ltd (in liq)* [2019] NZCA 365, (2019) 24 PRNZ 623 at [34]; and *Tarahau Farming Ltd v Shearing Services Kamupene Ltd (in liq)* [2019] NZCA 601 at [20] and [26].

prejudice to Mr Smith. The issues raised by the appeals are of significance to the parties.⁵

[7] The applicants also appear to complain that because Mr Smith had not responded to previous correspondence from them (a “claim of right”) he must be deemed to have accepted their allegations. This is incorrect. So too is their supposition that he required authorisation of the Westland District Council to sue them in defamation; the claims may arise from his conduct in office but it is his own reputation that was allegedly harmed and his cause of action. (Their claim that the Council met his costs without authorisation is a different matter, as to which we express no view.) Their stance appears generally to be not that the allegations were never made but that they were true or justified; if so, they assume a significant burden. However, we are not presently able to preclude the possibility that there is a legally recognisable defence available.⁶

[8] The applicants have also told the Registrar that because they have offered to settle they incur no liability to pay more costs in this Court. They are not in a position to insist on that. If the appeal is to proceed they will need to pay security for costs in this Court or obtain a waiver from the Registrar.⁷ Any unsuccessful attempt to settle may be taken into account when costs are fixed after the appeal is heard.

[9] The application for an extension of time is granted.

Solicitors:
Lane Neave, Christchurch for Respondent

⁵ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [38].

⁶ At [32].

⁷ Court of Appeal (Civil) Rules 2005, r 35.