

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA433/2025
[2025] NZCA 446**

BETWEEN SARAH SMITH
Applicant
AND JENNIFER BLACK
Respondent

Counsel: Applicant in person
No appearance for Respondent

Judgment: 8 September 2025 at 11:00 am
(On the papers)

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

- A The application to review the Deputy Registrar's decision to reject the application for leave to appeal the costs order for filing is granted.**
- B The applications to review the Deputy Registrar's decisions are otherwise declined.**
- C Ms Smith's application for leave to appeal is accepted for filing. Ms Black must file a memorandum in response to this application within 10 working days of the date of this judgment.**
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REASONS

[1] I have before me applications by Ms Smith to review the following decisions of the Deputy Registrar:¹

¹ I have used the fictitious names that were adopted by La Hood J in the High Court.

- (a) rejecting the following documents for filing:
 - (i) an application for leave to appeal a costs order;
 - (ii) an application for leave to appeal a decision declining leave to appeal to this Court;
 - (iii) an application for stay of a High Court costs order; and
- (b) declining to grant an application for waiver of fees.

Background

[2] Ms Smith commenced defamation proceedings against Ms Black in the District Court. Her claim was struck out.² An appeal to the High Court was dismissed by La Hood J on 28 November 2024 and costs were subsequently awarded against Ms Smith.³ Ms Smith made applications for leave in the High Court to appeal both the substantive decision and the costs order. On 9 June 2025, the Judge dismissed Ms Smith's application for leave to appeal the substantive decision.⁴ However, it appears no consideration was given by the Judge in that decision to Ms Smith's application for leave to appeal the costs order.

[3] Ms Smith filed an application for leave to bring a second appeal in this Court against the substantive decision,⁵ and attempted to file leave applications against the costs order and the decision to refuse leave. She also sought a stay of the execution of the costs order and applied for a waiver of filing fees.

[4] The Deputy Registrar rejected for filing the applications for leave to appeal the costs order, leave to appeal the leave decision and the application for stay of the High Court costs order. The Deputy Registrar found that:

² *[Smith] v [Black]* [2024] NZDC 4687.

³ *Smith v Black* [2024] NZHC 3598 [substantive judgment]; and *Smith v Black* [2025] NZHC 76 [costs judgment].

⁴ *Smith v Black* [2025] NZHC 1493 [leave judgment].

⁵ An extension of time and waiver of service requirements for this application were granted by Ellis J in a minute dated 29 July 2025.

- (a) the application for leave to appeal the costs order should have, but had not been, refused first by the High Court;
- (b) there was no jurisdiction to appeal against a decision declining leave to appeal; and
- (c) the application to stay should have, but had not been, sought in the High Court.

Documents rejected for filing

[5] Dealing first with the application for leave to appeal the costs order, Ms Smith argues that she did first seek leave in the High Court to appeal the costs decision and that the Court has already declined leave to do so in the decision of 9 June 2025. I accept that an application was made in the High Court for leave to appeal the costs order, but at the time the matter came before the Deputy Registrar, no decision had been made by the High Court refusing that application.⁶ Therefore the Deputy Registrar was correct to refuse to allow the application for leave in this Court to proceed.⁷

[6] However, following the Deputy Registrar's decision, the High Court issued a judgment on 29 August 2025 declining leave to appeal the costs order.⁸ Given this Court now has jurisdiction to hear the application, and for reasons of efficiency the application for leave to appeal should now be accepted for filing.

[7] I understand that the decision to refuse to accept the application for stay is no longer contested. But if I am wrong about that, then I uphold the decision to refuse to accept the application for the reasons given by the Deputy Registrar.⁹

⁶ Leave judgment, above n 4.

⁷ Senior Courts Act 2016, s 60. As this Court said in *Siemer v Legal Complaints Review Officer* [2024] NZCA 219, [2024] 2 NZLR 593 at [29]: “whether leave to appeal is required in relation to a costs decision will depend on the underlying nature of the application to which the decision relates”.

⁸ *Smith v Black* [2025] NZHC 2507.

⁹ See also *Salem Ltd v Top End Homes Ltd* (2005) 18 PRNZ 122 (CA) at [15].

Fee waiver

[8] Turning then to the application for review of the Deputy Registrar's decision to decline waiver of fees. The power to waive fees is set out at reg 5 of the Court of Appeal Fees Regulations 2001. The Registrar may waive fees if satisfied the applicant is unable to pay the fee. An applicant is unable to pay a fee if they would otherwise suffer undue financial hardship if they paid the fee.¹⁰

[9] Ms Smith has filed an affidavit in support of her application for waiver, referring to among other things the fact that she is a single mother responsible for the care of her child; the costs of ongoing legal proceedings have placed a significant burden on her limited financial resources; and her bank statements demonstrate that she has not made any improper or extravagant expenditures, with all spending being directed to her basic needs. She notes that she has borrowed \$200,000 to purchase her house and she is struggling to make regular payments in relation to that loan. She also refers to the widespread increase in living costs in New Zealand as a whole and that the current matter engages children's rights, personal wellbeing and public justice which she says have significant legal and social implications.

[10] I acknowledge these points made by Ms Smith but, like the Deputy Registrar, I am not satisfied she would suffer undue financial hardship if the application fee of \$1,482 is paid. The financial records provided by her suggest that she has sufficient income to meet the fee expense without suffering undue financial hardship.

[11] Accordingly, the application to review the decision declining to grant a waiver of fees is declined.

Result

[12] The application to review the Deputy Registrar's decision to reject the application for leave to appeal the costs order for filing is granted.

[13] The applications to review the Deputy Registrar's decisions are otherwise declined.

¹⁰ See Court of Appeal Fees Regulations 2001, regs 5(2)(a) and 5(3)(b)(iii).

[14] Ms Smith's application for leave to appeal is accepted for filing. Ms Black must file a memorandum in response to this application within 10 working days of the date of this judgment.