IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CIV-2026-485-394
[2026] NZHC 2884

BETWEEN	ANGUS EDWARD MCKENZIE Plaintiff
AND	DEPUTY REGISTRAR, WELLINGTON HIGH COURT Respondent

Hearing: On the papers

Appearances: Plaintiff in person

Judgment: 21 September 2026

JUDGMENT OF RADICH J

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[1] On 14 January 2026, Mr McKenzie filed this proceeding against a Deputy Registrar of the Wellington Court. Mr McKenzie's statement of claim alleges that, on 12 January 2026, the Deputy Registrar defamed him by refusing his documents for filing. The proceeding has been referred to me by the Registry under r 5.35A of the High Court Rules 2016 on the basis of a belief that, on the face of the proceeding, it is plainly an abuse of the process of the Court.[1]

[2] If, in terms of r 5.35B, I am satisfied that the proceeding is "plainly an abuse of the process of the court", then I may, of my own initiative, make an order or give directions to ensure that the proceeding is disposed of or, as the case may be, proceeds

[1] This proceeding is subject to rr 5.35A–5.35C because Mr McKenzie filed before 1 February 2026. On 1 February 2026, s 28 of the Judicature (Timeliness) Legislation Amendment Act 2025 revoked rr 5.35A–5.35C of the High Court Rules, which specified how the Court is to deal with abusive proceedings. Simultaneously, s 7 of the Amendment Act inserted ss 164A–164C into the Senior Courts Act, which now govern how the Court is to deal with abusive proceedings filed from 1 February 2026. When, in this decision, I refer to rr 5.35A–5.35C, I am referring to the High Court Rules as they stood before the 1 February 2026 amendments.

in a way that complies with the rules including an order under r 15.1 that the proceeding be struck out or stayed.

[3] It is regrettable that this decision comes some time after the proceeding was filed. It seems that referral to a judge has followed the resolution — through the decision of McHerron J referred to in [17] below — of Mr McKenzie's related applications for review of the Deputy Registrar's refusal of the documents for filing in the cases in question.

Principles

[4] In *Te Wakaminenga O Nga Hapu Ki Waitangi v Waitangi National Trust Board*, The Court of Appeal described the nature of the powers that r 5.35B confers in the following terms:[2]

> [14] The powers conferred under r 5.35B reflect the inherent power all courts have to prevent their own procedures from being misused, for example as a means of oppression or otherwise in a way that is manifestly unfair such that the administration of justice will be brought into disrepute.[3] Lord Bingham described abuse of process as simply being "a use of the court process for a purpose or in a way which is significantly different from the ordinary and proper use of the court process".[4] Courts have a duty to prevent such abuse.
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> [15] The powers under r 5.35B must be exercised sparingly, and only in the clearest of cases. Given that the rule contemplates a litigant being denied the fundamental right of access to the courts, with the possibility of the proceeding being halted before it is even served, the abuse must be clear beyond doubt from reading the claim.

[5] The Court made the point that the power should not be used in cases in which a claim sought to be advanced may later be shown to be untenable as a matter of law, particularly in circumstances where, as there, certain key factual and legal issues were not clear at that early point in the proceedings.[5] Rather, as the Court emphasised, it

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2 *Te Wakaminenga O Nga Hapu Ki Waitangi v Waitangi National Trust Board* [2023] NZCA 63, [2023] NZAR 180. The Court of Appeal's comment at [15] was endorsed by The Supreme Court in *Wolfe v Governor-General of New Zealand* [2026] NZSC 109 at [25].

3 *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529 (HL) at 536 per Lord Diplock; and *Jones v New Zealand Bloodstock Finance and Leasing Ltd* [2021] NZHC 3220 at [21].

4 *Attorney-General v Barker* [2000] 1 FLR 759 (EWHC QB) at 764.

5 *Te Wakaminenga O Nga Hapu Ki Waitangi*, above n 2, at [16].

must be clear that plaintiffs are seeking to use the processes of the Court for some ulterior or improper purpose.[6]

[6] In a similar way, Kòs J expressed the relevant principles recently in the following way:[7]

> [15] Our constitutional arrangements regard access to the courts as a matter of real importance. A finding that a proceeding is an abuse of process is not to be lightly reached and pre-emptive intervention of this kind is only justifiable in cases involving clear abuses of process. Such cases may include (without limitation) those brought with an improper motive or in an attempt to obtain a collateral benefit, or where service of the proceedings would be manifestly unfair to another party or would bring the administration of justice into disrepute.

[7] When evaluating the application of r 5.35B, the Court must consider the broad public interest and the private interests of individuals who may otherwise be drawn into entirely unmeritorious proceedings and weigh these against the right of a litigant to bring proceedings.[8]

Mr McKenzie's statement of claim

[8] Mr McKenzie's statement of claim begins by recording that the Deputy Registrar declined his filings "T410398, T410400 and T410404" on 12 January 2026. These numbers refer to statements of claim Mr McKenzie wished to file separately against Mr Sidhu, The Co-operative Bank Ltd, and NZ Proud Kapiti Ltd. The Deputy Registrar declined the documents for filing on the basis of *res judicata*. In refusing the documents for filing, the Deputy Registrar referred to judgments of this Court that had, in his assessment, determined the claims Mr McKenzie wished to make against Mr Sidhu, The Co-operative Bank and NZ Proud Kapiti.[9]

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6 At [17].

7 *Donellan v Attorney-General* [2026] NZSC 110 (footnotes omitted). The decision related to ss 164A and 164B of the Senior Courts Act 2016 which, essentially, has replaced rr 5.35A and 5.35B of the High Court Rules.

8 *Jones*, above n 3, at [20].

9 The Deputy Registrar cited La Hood J's 4 November 2024 judgment as having most recently decided Mr McKenzie's claims against NZ Proud Kapiti and The Co-operative Bank: *McKenzie v The Co-Operative Bank Ltd* [2025] NZHC 3317. He cited McHerron J's 17 April 2025 judgment as having most recently decided Mr McKenzie's claims against Mr Sidhu: *McKenzie v Sidhu* [2025] NZHC 957.

[9] In his statement of claim, Mr McKenzie says that *res judicata* does not apply in the circumstances "because the decisions [the Deputy Registrar] is relying on were based on technical administration regarding filing in the civil court whist including references to criminal legislation".

[10] I interpolate here in order to explain this point. In statements of claim in other civil proceedings Mr McKenzie has sought to file, he has referred to provisions in criminal legislation. Those references were seen as being problematic in judgments of the Court which considered those pleadings, including those referred to in footnote 9 in this decision. Mr McKenzie says that the claims in this intended proceeding against the Deputy Registrar are different in nature and not subject to *res judicata.*

[11] Mr McKenzie then says in his statement of claim that the Deputy Registrar's decision to decline the filings "on the false grounds of res judicata is a defamation publication". Mr McKenzie seeks $50,000 in compensation and exemplary damages for the Deputy Registrar's "flagrant disregard" as well as the "humiliation" and "loss of reputation" the Deputy Registrar has caused him. Mr McKenzie does not particularise how the Deputy Registrar's decision to decline the filings has harmed his reputation.

[12] In *Donellan*, Kòs J said that, before considering whether under the new ss 164A and 164B of the Senior Courts Act a proceeding is an abuse of the process of the Court, the judge will consider whether further submissions are needed. I am satisfied that the point that arises for consideration here on the pleading that has been filed is such that further submissions are not needed.

[13] I will explain first why the Deputy Registrar's decision to decline the filings did not defame Mr McKenzie. I will then explain why I am satisfied that this proceeding is an abuse of process that tries to challenge a registrar's decision outside the proper process, which is a review of the registrar's decision. In three decisions since January 2026, the Court has confirmed that the claims Mr McKenzie sought to file and that the Deputy Registrar rejected are inappropriate.

Defamation

[14] A plaintiff in a defamation action must establish that:[10]

(a) a defamatory statement has been made;[11]

(b) the statement was about the plaintiff;[12]

(c) the defendant has published the statement.[13]

[15] The statement in question is the Deputy Registrar's 12 January 2026 email to Mr McKenzie. In the email, the Deputy Registrar declines Mr McKenzie's filings on the basis of *res judicata* and says: "You can't just make slight alterations to previously filed applications and keep refiling them expecting a different result."

[16] I see no arguable basis on which one could say this statement is defamatory. The statement is an explanation of the legal basis on which the Deputy Registrar declined Mr McKenzie's documents for filing, not "a false statement about a man to his discredit".[14] It is difficult to imagine circumstances in which it could be defamatory for a to registrar explain the legal basis on which they are declining to file documents.

[17] In any case, Mr McKenzie has provided no evidence that the Deputy Registrar published the statement to some person other than Mr McKenzie. The Deputy Registrar addressed his 12 January 2026 email to Mr McKenzie only. Accordingly, there is no foundation on which Mr McKenzie can say that the Deputy Registrar's email has harmed his reputation in the eyes of other people because the Deputy Registrar has not caused anyone else to see the email.

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10 *Chiv v Dai* [2024] NZHC 2825; and Ursula Cheer "Defamation" in Stephen Todd (ed) *Todd on Torts* (9th ed, Thomson Reuters, Wellington, 2023) at [15.2].

11 *Sim v Stretch* [1936] 2 All ER 1237 (HL) at 1240.

12 *David Syme & Co v Canavan* (1918) 25 CLR 234 at 238.

13 *Powell v Gelston* [1916] 2 KB 615 (KB) at 619.

14 *Youssoupoff v Metro-Goldwyn-Mayer Pictures Ltd* (1934) 50 TLR 581 (CA) at 584; and *Scott v Sampson* (1882) 8 QBD 491 (QB) at 503.

The proceeding is an abuse of process

[18] The crucial point is that I am satisfied that Mr McKenzie's defamation action is effectively a collateral challenge to the lawfulness of the Deputy Registrar's decision to refuse Mr McKenzie's filings. The appropriate way to challenge a registrar's decision to refuse filings is by way of an application for review. Indeed, Mr McKenzie did apply to review the Deputy Registrar's decision to decline his filings. On 22 May 2026, McHerron J decided Mr McKenzie's application to review that decision by dismissing the application in as it related to *McKenzie v Sidhu* while upholding it as it related to *McKenzie v The Co-operative Bank Ltd* and *McKenzie v NZ Proud Kapiti Ltd*.[15] In relation to Mr McKenzie's documents for The Co-operative Bank and NZ Proud Kapiti claims, McHerron J said the following:[16]

> I consider it would have been preferable for the Registrar to consider whether to accept the documents for filing on the usual basis (assuming fees were paid or after any successful fee waiver application) and then (if accepted for filing) to consider referral of the other two claims under r 5.35A, rather than to reject them on the basis of *res judicata*.

[19] Accordingly, the Registrar referred the *Co-operative Bank* and *NZ Proud Kapiti* proceedings to me under r 5.35A of the High Court Rules. On 19 August 2026, I released two decisions. One concerned Mr McKenzie's proceedings against The Co-operative Bank and the other related to his proceedings against NZ Proud Kapiti.[17] I struck out the claims in both the proceedings on the basis that they were plainly an abuse of process.

[20] As this sequence shows, Mr McKenzie had a remedy to address his dissatisfaction with the Deputy Registrar's declinature. He exercised the remedy and received a measure of relief from it. In those circumstances this proceeding is a collateral challenge to the declinature. It is, as Kòs J put it in *Donellan*, an attempt to obtain a collateral benefit. As a result, it is appropriate for the proceeding to be struck out as an abuse of process.

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15 *McKenzie* [2026] NZHC 1413 at [21].

16 *McKenzie v NZ Proud Kapiti Ltd*, above n 17, at [24]. The Court applied this automatic restraint under s 164C(3) of the Senior Courts Act.

17 *McKenzie v The Co-operative Bank Ltd* [2026] NZHC 2450; and *McKenzie v NZ Proud Kapiti Ltd* [2026] NZHC 2451.

Result

[21] The proceeding is struck out under rr 5.35B(2)(a) and 15.1(1)(d).

[22] Under r 5.35B(4), a copy of this decision is, if practicable, to be served on the defendant.

[23] If, as is the case here, a judge makes an order on the judge's own initiative without giving the person who filed the proceeding an opportunity to be heard, the order must contain a statement of that person's right to appeal against the decision.[18] Generally, under s 56(4)(a) of the Senior Courts Act 2016, someone in Mr McKenzie's position would have a right to appeal against this decision to the Court of Appeal. He would exercise that right through the application of relevant rules in the Court of Appeal (Civil) Rules 2005. However, since 19 August 2026, Mr McKenzie has been subject to an automatic three-year restraint from commencing civil proceedings (including appeals) and continuing civil proceedings without first obtaining the leave of the High Court.[19] Accordingly, if Mr McKenzie wishes to appeal this decision, he must apply to this Court for leave to do so.

Radich J

[18] High Court Rules, r 5.35B(3).

[19] *McKenzie v NZ Proud Kapiti Ltd*, above n 17, at [24]. The Court applied this automatic restraint under s 164C(3) of the Senior Courts Act.