IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 129/2024
[2025] NZSC 28

BETWEEN		RORE PAT STAFFORD Applicant
AND		ATTORNEY-GENERAL Respondent

Court: Ellen France, Kós and Miller JJ

Counsel: K S Feint KC, S M Hunter KC, M S Smith and H K Irwin-Easthope for Applicant
J R Gough and S M Kinsler for Respondent

Judgment: 7 April 2025

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B There is no order as to costs.

REASONS

[1] On 30 October 2024, Edwards J delivered a judgment finding, inter alia, that the Crown breached its fiduciary duty to the customary owners of land located at the top of the South Island by failing to reserve for them the promised full "tenth" of 151,000 acres of land that they sold to the New Zealand Company for the settlement of Nelson.[1]

[2] The Attorney-General has filed an appeal to the Court of Appeal, and Mr Stafford has filed a cross-appeal. A hearing is pending.[2]

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1 *Stafford v Attorney-General* [2024] NZHC 3110.

2 The appeal was filed on 28 November 2024. No further steps are being taken in the Court of Appeal until this application before the Supreme Court is determined.

[3] Mr Stafford has now brought an application for leave to bring an appeal directly to this Court from the High Court decision. The application seeks leave "to directly hear the Attorney-General's appeal … and [Mr Stafford's] cross-appeal" in order to finally determine the proceeding which was the subject of this Court's decision in *Proprietors of Wakatū v Attorney-General*.[3] The Crown opposes.

[4] We accept for present purposes that the proposed appeal raises issues of general or public importance, justifying consideration by this Court.[4] The question is whether the normal appellate pathways should be bypassed.[5] Mr Stafford's application rests on urgency. Mr Stafford is a kaumātua of Ngāti Rārua and Ngāti Tama descent and a beneficiary of the Tenths reserves by descent from owners identified in 1893 and has advanced the claims on behalf of collective customary owners over decades. He wishes "to resolve this injustice" within his lifetime so that, in his submission, ea is restored according to tikanga. He is concerned further delays will prevent that, given his age. He acknowledges that this Court has held that delay is not sufficient on its own to permit a leapfrog appeal,[6] but he contends that this is no ordinary case of delay; it has been eight years since delivery of this Court's decision and 15 years since the proceeding was filed. He contends that the Crown is relitigating issues which this Court resolved and is failing to act honourably to resolve the proceeding in as timely and efficient a manner as possible.

[5] The Crown denies that it is defending this proceeding with a view to prolonging it and depriving the proprietors of relief. It observes that the claim raises novel and complex issues and contends that the High Court's decision is a significant departure from long-settled principles of law and equity. It contends that the urgency associated with Mr Stafford's position (or from the costs of an intermediate appeal) does not outweigh the importance of having these issues fully ventilated in the Court of Appeal. It does not accept that the issues which it seeks to raise on appeal to the Court of Appeal have already been decided by this Court; in any event, the Court of Appeal is plainly able to assess whether that is so.

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3 *Proprietors of Wakatū v Attorney-General* [2017] NZSC 17, [2017] 1 NZLR 423.
4 See Senior Courts Act 2016, s 74(2)(a) and (3).
5 See s 75.
6 *Trustees of the Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2022] NZSC 144, [2022] ELHNZ 374 at [17].

[6] The issues are factually and legally complex and the manner of their resolution is very important. As the Attorney-General contends, there are implications for the Treaty of Waitangi settlement process. The issues do merit full consideration in the Court of Appeal. Mr Stafford's circumstances are obviously important given his high standing and his central role in the claims, but we have nonetheless reached the view that they are not so exceptional as to warrant us proceeding to hear the appeal without the benefit of the views of the Court of Appeal. Further, both parties have already engaged the jurisdiction of the Court of Appeal and a hearing there is pending; a consideration which counts against a direct appeal to this Court.[7]

[7] The application for leave to appeal is dismissed.

[8] There is no order as to costs.

Solicitors:
Pitt & Moore, Nelson for Applicant
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent

[7] See *Warren v R* [2021] NZSC 79 at [6].