

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 1/2022
SC 36/2022
[2022] NZSC 58

BETWEEN CAOPING DING AND BARRY BAI
Applicants

AND THOMAS EDMUND WILLIAM JAMES
First Respondent

KEATON PRONK, IAIN MCLENNAN
AND MCDONALD VAGUE LIMITED
Second Respondents

Court: Glazebrook and O'Regan JJ

Counsel: Applicants in person
B M K Pamatatau for First Respondent
B L Martelli for Second Respondents

Judgment: 11 May 2022

JUDGMENT OF THE COURT

- A The application for recall of this Court's judgment of 25 March 2022 (*Ding v James* [2022] NZSC 28) is dismissed.**
- B The application for leave to appeal in SC 36/2022 is dismissed.**
- C There is no order as to costs.**
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REASONS

[1] The applicants applied for leave to appeal to this Court against two judgments of the Court of Appeal.¹ The application was dismissed by this Court in a judgment

¹ *Ding v James* [2021] NZCA 578 (Brown and Courtney JJ) [first CA judgment]; and *Bai v James* [2021] NZCA 652 (French and Collins JJ) [second CA judgment].

delivered on 25 March 2022 on the basis that this Court had no jurisdiction to hear and determine an appeal against the first Court of Appeal judgment and that the leave criteria were not met in relation to the second Court of Appeal judgment.²

[2] The applicants also applied to the Court of Appeal for recall of the first Court of Appeal judgment. This was dismissed by the Court of Appeal in a judgment delivered on 14 March 2022.³

[3] The applicants have now applied for a recall of the Supreme Court leave judgment. In addition the applicants have attempted to file an application for leave to appeal to this Court against the Court of Appeal's recall judgment. The case officer in the Supreme Court declined to accept the latter application on the basis that there was no jurisdiction to consider it but ultimately it was accepted and referred to the present panel for decision.⁴ This judgment deals with both the application for recall of the Supreme Court leave judgment and the application for leave to appeal to this Court against the Court of Appeal's recall judgment.

[4] The factual background is set out in the Supreme Court leave judgment.⁵

SC 1/2022 – application for recall of [2022] NZSC 28

[5] We deal first with the application to recall the Supreme Court leave judgment.

[6] In *Uhrle v R*, this Court cited with approval the following passage from the decision of Wild CJ in *Horowhenua County v Nash (No 2)* as a convenient statement of these principles relating to recall of a judgment:⁶

[F]irst, where since the hearing there has been an amendment to a relevant statute or regulation or a new judicial decision of relevance and high authority; secondly, where counsel have failed to direct the Court's attention to a legislative provision or authoritative decision of plain relevance; and thirdly, where for some other very special reason justice requires that the judgment be recalled.

² *Ding v James* [2022] NZSC 28 [SC leave judgment].

³ *Ding v James* [2022] NZCA 56 (Brown and Courtney JJ) [CA recall judgment].

⁴ *Slavich v R* [2015] NZSC 195, (2015) 23 PRNZ 117 at [9].

⁵ SC leave judgment, above n 2.

⁶ *Uhrle v R* [2020] NZSC 62, [2020] 1 NZLR 286 at [22], citing *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC) at 633.

[7] It is clear the first two of these criteria are inapplicable in the present case. And there is nothing in the application for recall that identifies any reason for recall, let alone a very special reason. The fact that a party is unhappy with a judgment is not a reason for recall. And simply reasserting arguments that a Court has already rejected cannot provide a basis for recall.⁷

[8] The application for recall in SC 1/2022 is dismissed.

SC 36/2022 – application for leave to appeal

[9] The Court of Appeal's recall judgment records that Court's refusal to recall the first Court of Appeal judgment. The first Court of Appeal judgment recorded that Court's decision to dismiss an application for leave to appeal to the Court of Appeal. The Supreme Court leave judgment made it clear that this Court has no jurisdiction to hear and determine an appeal against a decision of the Court of Appeal refusing to grant leave to appeal to that Court.⁸ In those circumstances, it is obvious that this Court cannot hear and determine an appeal against a decision of the Court of Appeal refusing to recall such a decision.

[10] The application for leave to appeal in SC 36/2022 is therefore dismissed.

Other matters

[11] As the respondents were not called upon to make submissions in respect of these applications, there is no award of costs.

[12] The applicants make intemperate criticisms of those involved in the present proceedings in the documents filed in this Court in connection with the applications dealt with in this judgment. This is unacceptable. They have now exhausted the available legal avenues in relation to the proceedings that led to the first and second

⁷ *Biddle v R* [2021] NZSC 129 at [4]; and *Foster v R* [2021] NZSC 130 at [4].

⁸ Senior Courts Act 2016, s 68(b).

Court of Appeal judgments. Any further attempt to contest those judgments would be an abuse of the Court's process.

Solicitors:
Alden Ho, Auckland for First Respondent
HC Legal Ltd, Auckland for Second Respondents