

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**CIV 2021-404-1102  
[2021] NZHC 2618**

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| UNDER            | The Property Law Act 2007                        |
| IN THE MATTER OF | A Breach of [Lease] Contract                     |
| BETWEEN          | DENNIS ARTHUR SMITH<br>Appellant                 |
| AND              | IAN JAMES PLOWMAN<br>First Respondent            |
|                  | NIKAU GROVE NURSERY LIMITED<br>Second Respondent |
|                  | HELEN IRENE MITCHELL<br>Third Respondent         |

On the papers

Counsel: Appellant in person  
W E Andrews for the Respondents

Judgment: 1 October 2021

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**JUDGMENT OF CAMPBELL J**

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*This judgment was delivered by me on 1 October 2021 at 4:00pm pursuant to Rule 11.5  
of the High Court Rules*

*Registrar/Deputy Registrar*

[1] The appellant, Mr Smith, has filed a memorandum dated 21 September 2021 requesting a fee waiver for his application for leave to appeal. He had previously requested a fee waiver from the Registrar. That request was declined by a Deputy Registrar. Mr Smith is effectively seeking a review of that decision.

### **Mr Smith’s request to the Registrar for a fee waiver**

[2] Mr Smith’s request to the Registrar for a fee waiver was made under reg 18(2)(a) of the High Court Fees Regulations 2013. Regulation 18(2)(a) empowers a Registrar to waive a fee if satisfied, on the basis of one of the criteria specified in reg 19, that the applicant is “unable to pay the fee”. Of the various criteria specified in reg 19, it is evident from Mr Smith’s request that he relied on being “dependent for the payment of his or her living expenses on ... jobseeker support”. Mr Smith provided a copy of a letter from the Ministry of Social Development confirming he had been regranted jobseeker support from 24 August 2021.

### **The Deputy Registrar’s decision**

[3] The Deputy Registrar declined Mr Smith’s request. She said Mr Smith’s previous requests for fee waivers were declined on the basis that Mr Smith had other significant means. She referred to two minutes in this proceeding (to which I refer further below), one by Powell J dated 27 July 2021 and the other a minute that I issued on 11 August 2021. The Deputy Registrar said she was required to follow the decisions of High Court Judges.

### **Mr Smith’s submissions**

[4] Mr Smith said the Registrar’s decision would cause him “unreasonable difficulties”. He said the litigation began in the District Court in 2018 and at all times in that Court, and initially in this Court, he had claimed and been granted a fee waiver on the ground he is a beneficiary. He said nothing had changed, except that despite providing evidence of his financial status “a High Court judge has determined with no supporting evidence that [Mr Smith] ‘suddenly’ can afford court fees”.

## Decision

[5] The review function of a Judge in relation to a filing fee decision is exercised de novo. The question on this review is whether I am satisfied that Mr Smith is, on the basis of one of the criteria specified in reg 19, “unable to pay the fee”.

[6] In a conference minute dated 27 July 2021, Powell J recorded:

In the course of the conference today I endeavoured to discuss the issues with Mr Smith, together with his application for a fee waiver. In somewhat contradictory fashion Mr Smith asserted he had been given fee waivers in various proceedings in front of the District Court but nonetheless had significant means, offering to provide silver as security for the costs on appeal and stressing he does not seek special treatment. I therefore formed the view that there was no basis for fees to be waived or for security on appeal not to be paid.

[7] Following that minute Mr Smith filed, on 9 August 2021, a memorandum dated 6 August 2021. His memorandum was styled as a “Request for re-consideration”. Mr Smith said that at the conference before Powell J on 27 July 2021 he had explained he was a beneficiary with no cash assets but had “access to substantial amounts of gold & silver”. He said the court had “confused my personal situation in regards to finances as a beneficiary with that of a trust that owns precious metals”. To that memorandum he attached a graph showing the recent highs and lows of his Kiwibank balance and a photo of silver bar that he said was valued at over \$1,300. Mr Smith said he had presented the silver bar at the Taumarunui District Court in an attempt to pay security for costs.

[8] Mr Smith’s “Request for re-consideration” was, in substance, an application to vary or rescind the orders made by Powell J. I dealt with his request on that basis in a minute dated 11 August 2021. I dismissed the application on the ground it was out of time. But I also said:

[10] Even if Mr Smith had made the application in time, I would have dismissed it. Mr Smith’s document reveals that he was able to present to the Taumarunui District Court a silver bar that he says was valued at over \$1,300. If he has those means available to him (whether through a trust or otherwise) it is not appropriate that he enjoy a fee waiver in this court. ...

[9] In considering Mr Smith's current application I have had regard to the contents of his memoranda dated 6 August and 21 September 2021, notwithstanding that the "evidence" in those memoranda was not in the form of an affidavit.

[10] I accept, based on those memoranda, that Mr Smith is on jobseeker support and has minimal immediate cash resources. But those matters in themselves do not mean he is unable to pay the fee for which he sought a waiver.

[11] In the first memorandum Mr Smith also said:

- (a) He had access to substantial amounts of gold and silver.
- (b) He could provide as much security as the court wanted "in terms of silver".
- (c) He could control assets to provide security. These assets "are not mine; they are owned by a trust". Nonetheless, Mr Smith emphasised that *he* controlled and could provide those assets.

[12] In light of those statements, I am not satisfied Mr Smith is unable to pay the fee for which he sought a waiver. I reach the same conclusion as the Deputy Registrar that Mr Smith's application for a fee waiver should be declined.

## **Result**

[13] I decline Mr Smith's application to review the Deputy Registrar's decision.

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Campbell J