

**IN THE SUPREME COURT OF NEW ZEALAND
I TE KŌTI MANA NUI**

SC MA 6/2021

In the matter of:

An application by non-party Vincent Ross
Siemer to rescind or vary suppression order

Application for recall of Judgment SC MA 6/2021 NZSC [2021] NZSC 72

30 August 2021

Filed by:
Vince Siemer
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Orewa
Email: vsiemer@hotmail.com

The Applicant seeks recall of Judgment MA 6/2021 [2021] NZSC 72 (“the Judgment”):

On the Grounds

1. The Judgment’s reasoning for dismissal relied upon this materially incorrect premise:

“[2] The application for recall is in substance an attempt to reargue the application for the Court to vary its suppression orders. Nothing has therefore been advanced which would warrant recall of the judgment.”

2. The Judgment footnote at [2] consequently determined its material misstatement of fact fell outside the legal criteria for recall as defined in *Saxmere Disestablishment Co Ltd. [2020] (No 2) [2009] NZSC 122, [2010] 1 NZLR*. Helpfully, that Saxmere No. 2 judgment reversed the Saxmere No. 1 judgment after accepting that first judgment had relied upon a misstatement of fact.¹ Only because Saxmere lodged a *second* recall application did this Court of five judges finally concede Supreme Court Justice Wilson did owe appearing Counsel a substantial sum of money and, on this basis, reversed itself.
3. The Applicant has received legal advice that he also file a second recall application due to the Judgment’s misrepresentation of his first recall application grounds.
4. PUBLIC INTEREST GROUND
 - a) A pattern of material errors in the Supreme Court of New Zealand record appears commonplace, growing and never explained. Recent examples are given below.
 - b) Add to this the current explosion of public suppression orders by the Supreme Court, many made without the necessary reasons being provided. SEE attachment A

EVIDENCE OF JUDGMENT MISREPRESENTATIONS

5. The Judgment’s factual premise that the recall application “**is in substance an attempt to reargue the application for the Court to vary its suppression orders**” is self-evidently false. The recall application identified a “flawed legal approach” by the Court to the application to vary suppression – a flawed approach that became evident only as a result of the Judgment.
6. As background, no party opposed the application to vary the Supreme Court’s suppression order.² This included the Attorney-General. No notice was given by the Supreme Court that

¹ That false premise was that Supreme Court Justice Bill Wilson did not personally owe appearing Counsel a substantial sum of money at the time Wilson J ruled in favour of Counsel’s client

² Billington QC for the appellant did assert the Supreme Court of New Zealand lacked jurisdiction over its own processes and rulings but, as a preliminary question, this argument was rejected as nonsense.

it planned to consider any other legal question and no hearing was allowed.

7. The lack of notice or hearing is submitted to be critical because this Court then proceeded to determine the **unopposed** non-party application to vary suppression by fashioning novel interpretations of constitutional and procedural law in private and *ex parte*. This included:
 - a. Deciding judges' powers to issue public suppression orders, enforceable by imprisonment, are not constrained by statutes³ that define the Court's powers to order suppression of information (i.e. "inherent powers" are not limited by legislation).
 - b. Asserting judges can now rely upon "practical difficulties"⁴ as a lawful excuse for not complying with suppression limits enacted by Parliament.⁵
 - c. Determining "Public interest" in matters before New Zealand's highest court is not a relevant consideration when ordering blanket suppression that is temporary (in this case, two years).
 - d. Refusing, without lawful excuse, to consider direct harm caused by maintaining unnecessary blanket suppression of Supreme Court rulings that impact due process generally in New Zealand.⁶
 - e. Ignoring settled law that required judges give considerable weight to the public's right to know "as a starting point when considering any suppression order"⁷.
8. The recall application challenged these novel rulings that were determined off-the-record, in private, without notice to, or hearing from, anyone.
9. Again as background, the Judgment refusing to vary the suppression order did not address the "substance" of the unopposed application, perhaps because maintaining blanket suppression was not defensible on merit. The Supreme Court effectively admitted as much when it gave as its lawful excuse "practical difficulties" prevented judges from identifying what in the ***S v Vector* [2020] NZSC 97** judgment warranted any suppression.
10. Common logic suggests the five judges of the Supreme Court of New Zealand did what persons holding unchecked power would do when caught acting improperly. They ruled suppression would be maintained, not on merit, but because of what they claimed were "practical difficulties" in identifying what exactly needed to be suppressed. They declared

³ The Criminal Procedure Act 2011 was one statute identified as not binding *because* it contained no explicit prohibitions on "inherent powers", with no legal support provided and no opposing view considered.

⁴ *RE: Siemer MA6/2021 [2021] NZSC 50*, at [13]

⁵ This approach was endorsed by the Court *ex parte* as excuse for not complying with s 199 (c) of the Criminal Procedure Act 2011.

⁶ Dr F C Deliu was denied the right to provide evidence that suppression in this case prejudiced his private prosecution by depriving him of the Court's ruling on how private prosecutions should be conducted generally in New Zealand.

⁷ *Erceg v Erceg* [2016] NZSC 135 and *Rogers v TVNZ Ltd* [2007] NZSC 91

also that s 199(c) of the Criminal Procedure Act 2011 (which requires judges conduct this identification exercise) was eclipsed by judges' "inherent powers" to sidestep the legislation.

PUBLIC INTEREST

11. The proliferation of blanket suppression orders by the Supreme Court is frankly mindboggling, particularly for a final appellate court whose primary function is "**maintaining overall coherence in the legal system**".⁸ Attention is again directed to Attachment A which identifies suppression orders are a common occurrence at New Zealand's highest court.
12. In this case, the Supreme Court issued a blanket suppression order – indeed, hiding evidence any judgment was issued – notwithstanding the Attorney-General and New Zealand's largest utility both being parties AND the judgment determining how every private prosecution will be conducted in New Zealand going forward. All the judges refused to address the clear public interest, as well as the public's legal right to know, all of which was thwarted by their blanket order issued without any analysis undertaken or detailed reasons given.
13. This routine suppression not only prevents transparency into Supreme Court judges' actions, it almost certainly conceals a large number of factual errors being made in the court record.
14. The Applicant relies upon **two unrelated Supreme Court judgments issued within the past two weeks** (*Alkazaz v Enterprise It Ltd* [2021] NZSC 101 and *Madsen-Ries v Cooper* [2021] NZSC 104) to demonstrate false material premises are a common affliction within New Zealand's highest Court – even when five Supreme Court judges sit.
15. In *Alkazaz*, at [8], this Court conceded it had misstated (1) the relevant time period, (2) the relevant sum paid by the Appellant, (3) its own knowledge of applicable monies paid into Court, and (4) both parties' position on pursuit of the relevant costs award. Not one of the three Supreme Court judges on the panel caught any of these relevant errors in the judgment each signed off on.
16. In *Madsen-Ries*, this Court was asked to clarify its earlier costs award. In response, this Court issued a "judgment" which conceded at "[4] *It is true the second respondents were not recorded as being represented in this Court.*" – before ordering a further \$1,500 costs against both respondents for merely identifying the order was not clear or logical. This, *after* the Court itself admitted the apparent lack of legal logic in its costs order. Not one of the **five**

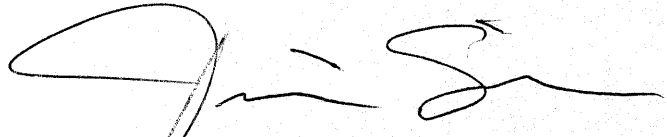
⁸ <https://www.courtsofnz.govt.nz/the-courts/supreme-court/history/>

Supreme Court judges on the panel had evidently given any prior thought to identifying the parties involved, where costs would fall or why – and they failed to do so despite costs being a relevant component to every civil appeal.

17. An explanation seems apt as to why benches of three-to-five judges at the highest level of the court system can routinely get basic facts wrong in so many cases.
18. As this application is being prepared, the Supreme Court today issued judgment ***Sharma v Wati SC 75/2021 [2021] NZSC 107***, denying a two-day extension of time on grounds “*the Court considered the High Court was correct that the Limitation Act did not apply to enforcement proceedings which were governed by the relevant court rules.*”, adding that any attempt to argue a legislative act is **not** rendered nugatory by “*court rules*” is “*clearly hopeless*”.⁹ New Zealand’s highest court then nodded costs will be awarded against Sharma, without hearing, because he *signalled his intent* to argue that statutes passed by Parliament carry more force in the law than “*court rules*”. This message is not lost on the submissive lawyers in New Zealand who largely fear losing their livelihoods if they speak out. This application is being copied to the **NZ Bar Association** to consider intervention in this application on this basis. Again, this Court has not defended its suppression order on anything but “*practical difficulty*” and “*inherent powers*” grounds that have never before been an excuse for holding “*the public criminally culpable for talking about public court matters*”.
19. In every other democracy built on the rule of law, the independent bar is the institutional bastion against judicial overreach. The Attorney-General is the constitutional backstop. Yet it is too much to expect the Attorney-General to speak out because, despite being a party in this proceeding who does not support suppression, he is content to let people go to prison because he is the person in New Zealand appointing all these judges committing the alleged offences.
20. Of course, if this application in any way misstates the facts and law, the Attorney-General, as a party, has a direct line to legally refute it. It is unlikely his judges will allow him this opportunity.
21. Hiding habitual errors and cavalier acts committed by full benches of a country’s top judges by way of extensive use of suppression orders is submitted to be a crime on any society that

⁹ *Sharma v Wati* [2021] NZCA 220, at [7] (Kós P, Gilbert and Courtney JJ) is relied upon despite that judgment being a refusal to allow an extension of time to appeal (i.e. no merit arguments were ever heard)

purports to value the rule of law or transparency. In the “canary in the coal mine” view, the applicant had a right to have his application to vary this Court’s blanket suppression order determined on its merits. This right was not afforded him. Yet it was because this Court, by the Judgment and in place of considering merits, proclaimed novel powers for itself in an off-record procedure deliberately conducted without notice to or hearing from anyone, and refused to consider competing views to its preference of expanding Judges’ powers,¹⁰ that this recall application is being made.

A handwritten signature in black ink, appearing to read 'Vince Siemer', written over a horizontal line.

Vince Siemer, applicant

CC: parties in S v Vector

Paul Radich QC, New Zealand Bar Association

¹⁰ Here again, the Court newly proclaimed in this off-record and private process that its “inherent powers” to act as it chooses is not curtailed by legislation and that “practical difficulties” in identifying information warranting public suppression is a lawful excuse for choosing blanket suppression instead.

Case name	M v Auckland Council
Case number	SC 77/2019
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Court of Appeal decision	Not publicly available
District/High Court judgment	Not publicly available

Case name	S v The Queen
Case number	SC 99/2020
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted. 17 December 2020
High Court decision	Not publicly available
Court of Appeal decision	Not publicly available

Case name	M v The Queen
Case number	SC 100/2020
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted. 17 December 2020
High Court decision	Not publicly available
High Court decision	Not publicly available

Case name	P v New Zealand Police
Case number	SC 16/2021
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of retrial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of retrial. Publication in law report or law digest permitted.
High Court decision	Not publicly available
Court of Appeal decision	Not publicly available

Case name	R v The Queen
Case number	SC 109/2020
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted. 18 February 2021
High Court decision	Not publicly available
Court of Appeal decision	Not publicly available

Case name	H and P v The Queen
Case number	SC 112/2020
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted. 01 March 2021
District Court decision	Not publicly available
Court of Appeal decision	Not publicly available

Case name	T (SC 90/2019) V The Queen
Case number	SC 90/2019
Summary	ORDER PROHIBITING PUBLICATION OF THE JUDGMENT AND ANYPART OF THE PROCEEDINGS (INCLUDING THE RESULT) IN NEWSMEDIA OR ON THE INTERNET OR OTHER PUBLICLY AVAILABLE DATABASE UNTIL FINAL DISPOSITION OF TRIAL. PUBLICATION INLAW REPORT OR LAW DIGEST PERMITTED.
Result	ORDER PROHIBITING PUBLICATION OF THE JUDGMENT AND ANY PART OF THE PROCEEDINGS (INCLUDING THE RESULT) IN NEWS MEDIA OR ON THE INTERNET OR OTHER PUBLICLY AVAILABLE DATABASE UNTIL FINAL DISPOSITION OF TRIAL. PUBLICATION IN LAW REPORT OR LAW DIGEST PERMITTED. 23 October 2019
District Court decision	Not publicly available
Court of Appeal decision	Not publicly available

Case name	C v The Queen
Case number	SC 29/2021
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of retrial. Publication in law report or law digest permitted.
District Court decision	Not publicly available
Court of Appeal decision	Not publicly available

Case name	The Queen v K
Case number	SC 10/2019
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted. 10 May 2019
High Court decision	Not publicly available
Court of Appeal decision	Not publicly available
Date of Hearing, judges	27 March 2019 Winkelmann CJ, William Young, Glazebrook, O'Regan and Ellen France JJ
Case name	M(SC 14/2019) The Queen
Case number	SC 14/2019
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted. 28 February 2019
High Court decision	Not publicly available
Court of Appeal decision	Not publicly available
Case name	H v The Queen
Case number	SC 49/2021
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of retrial. Publication in law report or law digest permitted.
District Court decision	Not publicly available
Court of Appeal decision	Not publicly available
Case name	J (SC111/2019) v The Queen
Case number	SC 111/2019
Summary	ORDER PROHIBITING PUBLICATION OF THE JUDGMENT AND ANY PART OF THE PROCEEDINGS (INCLUDING THE RESULT) IN NEWS MEDIA OR ON THE INTERNET OR OTHER PUBLICLY AVAILABLE DATABASE UNTIL FINAL DISPOSITION OF TRIAL. PUBLICATION IN LAW REPORT OR LAW DIGEST PERMITTED.
Result	Order prohibiting publication of this judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted. 19 November 2019
Court of Appeal decision	Not publicly available
High/District Court judgment	not publicly available

Case name	M v The Queen
Case number	SC 53/2021
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted. 17 June 2021
District Court decision	Not publicly available
Court of Appeal decision	Not publicly available

Case name	The Queen v R and W
Case number	SC 23/2019
Summary	Civil / Criminal Appeal - Application for leave to bring an appeal
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted. 4 April 2019 Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted. 5 March 2020
District Court decision	Not publicly available
Court of Appeal decision	Not publicly available
Date of hearing	23 July 2019 Winkelmann CJ, Glazebrook, O'Regan, Ellen France and Williams JJ

Case name	W(SC 122/2019) v The Queen
Case number	SC 122/2019
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of retrial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of retrial. Publication in law report or law digest permitted. 14 February 2020
High Court decision	Not publicly available
Court of Appeal decision	Not publicly available
Summary	

Case name	M (SC 56/2021) v The Queen
Case number	SC 56/2021
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.

Case name	D v The Queen
Case number	SC 28/2019
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
District Court decision	Not publicly available
High Court decision	Not publicly available

Case name	H (SC 60/2021) v The Queen
Case number	SC 60/2021
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
District Court decision	Not publicly available
Court of Appeal decision	Not publicly available

Case name	W v The Queen
Case number	SC 30/2019
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted. 22 May 2019
District Court decision	Not publicly available

Case name	Carl David George Butcher v The Queen
Case number	SC 35/2019
Summary	Not publicly available
Result	Not publicly available
Court of Appeal decision	Not publicly available
High/District Court judgment	Not publicly available

Case name	W (SC38/2019) v The Queen
Case number	SC 38/2019
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted. 14 September 2020
Court of Appeal decision	Not publicly available
High/District Court judgment	Not Publicly Available
Hearing date - Judges	19 August 2019 Winkelmann CJ, Glazebrook, O'Regan, Ellen France and Williams JJ

Case name	H v The Queen
Case number	SC 1/2020
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted. 6 May 2020 Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted. 23 June 2020 23 June 2020
High Court decision	Not publicly available
Court of Appeal decision	Not publicly available

Case name	R v The Queen
Case number	SC 25/2020
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Court of Appeal decision	Not publicly available
Case name	S v The Queen
Case number	SC 26/2020
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted. 11 May 2020
Court of Appeal decision	Not publicly available
Case name	L (SC 54/2019) v The Queen
Case number	SC 54/2019
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Case name	S v The Queen
Case number	SC 33/2020
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted. 19 June 2020
Case name	A v The Queen
Case number	SC 35/2020
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted. 12 June 2020
High Court decision	Not publicly available
Court of Appeal	Not publicly available

Case name	C (SC 68/2019) v The Queen
Case number	SC 68/2019
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted. 16 August 2019
Court of Appeal decision	Not publicly available
District Court decision	Not publicly available

Case name	T (SC 69/2019) v The Queen
Case number	SC 69/2019
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted. 16 August 2019
Court of Appeal decision	Not publicly available
High Court decision	Not publicly available

Case name	H v The Queen
Case number	SC 89/2020
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted. 10 November 2020
High Court decision	Not publicly available
Court of Appeal decision	Not publicly available

Case name	W v S, H L and L
Case number	SC 91/2020
Summary	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted.
Result	Order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest permitted. 26 November 2020
High Court decision	Not publicly available
Court of Appeal decision	Not publicly available

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 29/2019
[2021] NZSC 104**

BETWEEN

**VIVIEN JUDITH MADSEN-RIES AND
HENRY DAVID LEVIN AS
LIQUIDATORS OF DEBUT HOMES
LIMITED (IN LIQUIDATION)
First Appellants**

**DEBUT HOMES LIMITED (IN
LIQUIDATION)
Second Appellant**

AND

**LEONARD WAYNE COOPER
First Respondent**

**LEONARD WAYNE COOPER AND
TRACEY COOPER AS TRUSTEES OF
THE L & T COOPER FAMILY TRUST
Second Respondents**

Court: Winkelmann CJ, Glazebrook, O'Regan, Ellen France and
Williams JJ

Counsel: N H Malarao and P V Shackleton for Appellants
R B Hucker and R F Selby for Respondents

Judgment: 24 August 2021

JUDGMENT OF THE COURT

**A The application for recall of this Court's judgment of
24 September 2020 (*Madsen-Ries v Cooper* [2020] NZSC
100) is dismissed.**

B The respondents must pay the appellants costs of \$1,500.

REASONS

Background

[1] In our judgment of 24 September 2020 in *Madsen-Ries v Cooper*, we made a costs order against the respondents.¹ This means that both the first and second respondents bear joint and several liability for the payment of the costs order.

[2] By memorandum of 1 July 2021, Mr and Mrs Cooper seek recall of this Court's judgment to clarify that the costs order is made solely against Mr Cooper as first respondent. This is on the basis that the second respondents took no active steps either in this Court or the Court of Appeal, although they were represented by the same counsel as Mr Cooper in the High Court. Further, it was only a small part of the argument that an order should not have been made, under s 299 of the Companies Act 1993, that the security in favour of the second respondents be set aside to the extent of any compensation payable by Mr Cooper. Mr Cooper submits that it was in his capacity as director of Debut Homes Ltd that he made submissions on the s 299 issue.

[3] The appellants say that the L & T Cooper Family Trust sought to uphold the Court of Appeal's decision on the s 299 order and made submissions through Mr Cooper. It did not differentiate its position from that of Mr Cooper. Further, the submissions advanced in this Court on the s 299 order were inextricably intertwined with the breach of duty issues. They also say that related parties to the same appeal should be discouraged from effectively appointing one party to pursue all appeal points in order to try and shield themselves from costs awards.

Our assessment

[4] It is true that the second respondents were not recorded as being represented in this Court. However, it would be artificial to allow Mr Cooper to compartmentalise his roles in this manner and assert he was acting in only one capacity when making submissions on the s 299 issue. We also accept the

¹ *Madsen-Ries v Cooper* [2020] NZSC 100 at [191].

appellants' submission that the issues of breach of duty and s 299 were inextricably intertwined.

Result

[5] The application for recall of this Court's judgment of 24 September 2020 (*Madsen-Ries v Cooper* [2020] NZSC 100) is dismissed.

[6] The respondents must pay the appellants costs of \$1,500.

Solicitors:
Meredith Connell, Auckland for Appellants
Hucker & Associates, Auckland for Respondents

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 39/2021
[2021] NZSC 101**

BETWEEN

AHMED ALKAZAZ
Applicant

AND

ENTERPRISE IT LIMITED
Respondent

Court: William Young, Glazebrook and Williams JJ

Counsel: Applicant in person
R J Bryant for Respondent

Judgment: 16 August 2021

JUDGMENT OF THE COURT

- A The application for an extension of time to apply for leave to appeal is dismissed.**
 - B The application for recall of this Court's judgment of 11 June 2021 (*AlKazaz v Enterprise IT Ltd* [2021] NZSC 59) is allowed only to make the corrections identified at [8] below.**
 - C The [2021] NZSC 59 judgment is reissued with those corrections.**
 - D The applicant must pay the respondent costs of \$2,500.**
-

REASONS

Leave application

[1] Mr AlKazaz applies for leave out of time to appeal directly against a decision of the Employment Court dismissing his challenge against the Employment Relations Authority's (ERA's) refusal to reopen a prior investigation (the Employment Court

reopening decision).¹ The investigation related to a decision in which Mr AlKazaz succeeded in an unjustified dismissal claim against the respondent, although the ERA reduced his award by 20 per cent for contributory conduct (the original ERA decision).² Mr AlKazaz ultimately wishes to dispute the finding of contribution.

[2] Mr AlKazaz says that the exceptional circumstances justifying a leapfrog appeal are that he cannot obtain further employment in New Zealand unless the ERA's investigation is reopened or challenged. His explanations for bringing the application out of time seem to be that he is a litigant in person whose first language is not English, and that he was following the standard process by first seeking leave to appeal to the Court of Appeal.

[3] Mr AlKazaz also refers to two other decisions under the heading "Particulars of the decision against which the Plaintiff wishes to Appeal":

- (a) a decision of the Court of Appeal refusing leave to appeal against the Employment Court reopening decision (the Court of Appeal leave decision);³ and
- (b) a single decision of the Court of Appeal dismissing his applications for recall of the Court of Appeal leave decision, for stay of execution of the costs order, and for a declaration that the respondent's representation was "invalid".⁴

[4] This Court does not have jurisdiction to hear an appeal against the Court of Appeal leave decision.⁵ Nor does it have jurisdiction to hear an appeal against a Court of Appeal decision refusing to recall a judgment declining leave to appeal.⁶ There are no submissions addressing the refusal for stay and no evidence supporting the allegation against the respondent's representation.

¹ *AlKazaz v Enterprise IT Ltd* [2020] NZEmpC 171 (Chief Judge Inglis).

² *Alkazaz v Enterprise IT Ltd* [2017] NZERA Auckland 400.

³ *Alkazaz v Enterprise IT Ltd* [2021] NZCA 13 (Miller and Goddard JJ).

⁴ *Alkazaz v Enterprise IT Ltd* [2021] NZCA 132 (Miller and Goddard JJ).

⁵ Senior Courts Act 2016, s 68(b).

⁶ *Ngahua Reihana Whanau Trust v Flight* (2004) 17 PRNZ 357 (SC) at [3].

[5] The application for leave to appeal against the Employment Court reopening decision is well out of time. Mr AlKazaz has now also applied to the Employment Court for an extension of time to bring a late challenge against the original ERA decision. In those circumstances, it is not necessary in the interests of justice to extend time for leave to appeal to this Court.

[6] In any event, even if the application had been made in time, the leave criteria are not met. Mr AlKazaz has not raised any question of law⁷ and there are no exceptional circumstances justifying a direct appeal.⁸ Any appeal would be no more than a challenge to the Employment Court's assessment of the facts relating to the application to reopen the ERA's investigation.

Recall application

[7] Mr AlKazaz has also applied to recall this Court's earlier refusal to stay proceedings in the Employment Court.⁹ It is unnecessary to deal with this matter in any detail in light of our refusal to extend time for Mr AlKazaz to bring his application for leave to appeal. It is sufficient to note that the applicant pointed out some minor factual errors in this Court's stay decision which it is appropriate to correct by means of recall. These have no material effect on the result. The substantive matters raised by the applicant in his recall application are now moot.

[8] The stay judgment is therefore recalled and reissued with the following corrections:

- (a) At [3], delete the words "Over a year" and replace with "Eight months".
- (b) At [7], delete the words "been 'ordered to pay'" and replace with "paid".
- (c) At [7], delete the words "It is unclear what case this order relates to, or whether he has paid this sum into the Court."

⁷ Employment Relations Act 2000, s 214A(1).

⁸ Employment Relations Act, s 214A(4); and Senior Courts Act, s 75.

⁹ *AlKazaz v Enterprise IT Ltd* [2021] NZSC 59.

- (d) At [13], delete the words “Even more to the point, Mr AlKazaz has not suggested that EIT is currently pursuing its costs award against him.”

Costs

[9] The applicant must pay the respondent costs of \$2,500 in respect of the leave application.

[10] There is no costs order in respect of the recall application.

Result

[11] The application for an extension of time to apply for leave to appeal is dismissed.

[12] The application for recall of this Court’s judgment of 11 June 2021 is allowed only to make the corrections identified above at [8]. That judgment is reissued with those corrections.

[13] The applicant must pay the respondent costs of \$2,500.

Solicitors:
Aspiring Law Ltd, Wanaka for Respondent