

HIGH COURT OF AUSTRALIA

STEWARD J

IN THE MATTER OF AN APPLICATION BY
SARAH JANE ROBINSON & ANOR FOR LEAVE
TO ISSUE OR FILE

[2024] HCASJ 11

Date of Judgment: 21 February 2024

C1 of 2024

ORDER

- 1. Application for leave to issue or file the application for a constitutional or other writ dated 3 October 2023 is refused.*

Representation

The applicants are unrepresented.

1 STEWARD J. The applicants sought to file an application dated 3 October 2023
for a constitutional or other writ. On 30 October 2023, Jagot J directed the
Registrar pursuant to r 6.07.2 of the *High Court Rules 2004* (Cth) to refuse to issue
or file the application without the leave of a Justice of the Court first had and
obtained. The applicants now apply for that leave.

2 The facts and legal claims underlying the applicants' proposed application
can be summarised briefly.

3 The applicants seek to commence proceedings against five named Justices
of the Supreme Court of New South Wales, and the Court of Appeal of the
Supreme Court of New South Wales, in the original jurisdiction of this Court. The
principal order sought by the applicants is as follows:

"1. To ask the court to set aside [its] orders on the ground of fraud
perjury and abuse which caused miscarriage of justice."

4 The proposed application does not identify the "court" or the "orders" the
subject of the first order sought by the applicants. Having regard to the proposed
application and the supporting material, it is apparent that the applicants seek to
set aside orders made by the Court of Appeal of the Supreme Court of New South
Wales, although the terms of the relevant orders of the Court of Appeal remain
unclear.

5 The applicants also seek other orders by their proposed application,
including orders reinstating the first applicant to her "rights" of "[i]nheritance" in
her deceased father's estate; orders for the "return" of assets by various individuals,
including the first applicant's brother, sister-in-law and the former solicitor for the
first applicant's brother; and orders to the effect that "all the fraudulent lies perjury
be removed from the court files". The applicants further seek an extension of time
in respect of their proposed application.

6 The proposed application arises in relation to proceedings commenced by
the applicants in the Supreme Court of New South Wales. The proceedings related
to, inter alia, the administration by the first applicant's brother of the deceased
estate of the late Mr Ronald Robinson (the first applicant's father and the second
applicant's grandfather), various transactions entered into by the first applicant's
late mother prior to her death, and claims for provision under the *Succession Act*
2006 (NSW). The claims advanced by the applicants in those proceedings are not
clearly stated. The applicants contend, however, that the proceedings were decided
on the basis of "fraud perjury, executor abuse, power of attorney abuse and false
documents".

7 By their proposed application, the applicants make various and wide-
ranging allegations of fraudulent and unconscionable conduct, perjury, and undue
influence by the first applicant's brother, his wife, his solicitor, and by the

applicants' former legal representatives. Those allegations concern the circumstances that were the subject of the proceedings below prosecuted by the applicants, as well as the conduct, and resolution, of those proceedings. The named defendants to the proposed application are identified as "the people who allowed the fraud, perjury and abuse, either willingly or unwillingly."

8 As noted above, Jagot J directed the Registrar to refuse to issue or file the application for a constitutional or other writ without the leave of a Justice of the Court first had and obtained. The grounds of the application for leave to issue or file are stated in affidavits affirmed by the first and second applicants respectively on 24 November 2023. The grounds stated largely repeat the substance of the proposed application for a constitutional or other writ. The first applicant further deposes that the purpose of the proposed application is to "have fraud, perjury and abuse removed from the court records and to have [their] rights returned to [them]". No further argument is advanced by the applicants as to why leave to issue or file should be granted.

9 In *Re Young*¹, Gageler J set out the principles governing the grant or refusal of leave to issue or file an application after a direction is made pursuant to r 6.07.2 of the *High Court Rules* as follows:

"The direction of a Justice pursuant to r 6.07.2 of the *High Court Rules* is available to be sought by the Registrar under r 6.07.1 of the *High Court Rules* in respect of a document which 'appears' to the Registrar 'on its face' to be 'an abuse of the process of the Court, to be frivolous or vexatious or to fall outside the jurisdiction of the Court'.

The discretion to refuse leave on an application made under r 6.07.3 of the *High Court Rules* falls to be exercised by a Justice by reference to the same criteria as those which inform the action of the Registrar under r 6.07.1. The discretion will ordinarily be exercised to refuse leave to issue or file a document where the document appears to the Justice determining the application 'on its face' to be an abuse of the process of the Court, to be frivolous or vexatious or to fall outside the jurisdiction of the Court.

As Edelman J has recently emphasised, it is implicit in the requirement that a document the subject of an application under r 6.07.3 be considered 'on its face' that the application falls to be determined without an oral hearing. Unlike an interlocutory application governed by Pt 13 of the *High Court Rules*, in respect of which r 13.03.1 provides that the Court or a Justice may direct that the application is to be determined without

1 (2020) 94 ALJR 448 at 451 [10]-[13]; 376 ALR 567 at 570 (footnote omitted).

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listing it for hearing, no direction of a Justice is needed for an application under r 6.07.3 to be determined without listing it for hearing.

The concept of abuse of process cannot be confined within closed categories. Sufficiently for present purposes, it encompasses an attempt to invoke the original or appellate jurisdiction of the High Court on a basis that is confused or manifestly untenable. Needless to say, exercise of the discretion to nip a proceeding in the bud is appropriate only in the clearest of cases."

10 It is plain on the face of the application and its supporting materials that the applicants seek to invoke this Court's jurisdiction "on a basis that is confused or manifestly untenable". The proposed application and the supporting materials do not disclose a cause of action as against the named defendants. Rather, the proposed application appears to be an attempt to relitigate matters that were previously the subject of proceedings before the Supreme Court of New South Wales.

11 In this regard, it is relevant to observe that an application for special leave to appeal from a decision of the Court of Appeal of the Supreme Court of New South Wales² was filed by the first applicant in this Court in March 2020. By that decision, the Court of Appeal dismissed the first applicant's appeal from orders made by Pembroke J in the Supreme Court of New South Wales approving releases under s 95 of the *Succession Act 2006* (NSW) in respect of any further claim by the first applicant for family provision from her deceased father's estate and her mother's future estate.³ The first applicant's application for special leave to appeal was dismissed on 29 April 2020.⁴ It appears that the proposed application for a constitutional or other writ that the applicants now seek to file in this Court concerns substantially the same facts and circumstances that were before the Court of Appeal. It will generally be an abuse of process for a party to commence a proceeding in the original jurisdiction of this Court where the nature of the application in this Court is amenable to appeal.⁵ The same is true where the

2 *Robinson v Robinson* (2020) 102 NSWLR 1.

3 *Robinson v Robinson* (2020) 102 NSWLR 1 at 3 [2], 4 [9] per Ward JA (Meagher and Gleeson JJA agreeing).

4 *Robinson v Robinson* [2020] HCASL 116.

5 *Construction Forestry Mining and Energy Union v Director of the Fair Work Building Industry Inspectorate* (2016) 91 ALJR 1 at 8 [22]; 338 ALR 360 at 367 per Nettle J; *Dimitrov v Supreme Court (Vic)* (2017) 263 CLR 130 at 138-139 [19] per Edelman J; *KDSP v Minister for Immigration, Citizenship, Migrant Services and*

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application is, in substance, an attempt to relitigate issues for which the appeal process has concluded without further reason.⁶

12 The proposed application is, therefore, properly regarded as an abuse of process. Accordingly, I am satisfied that it is appropriate to exercise my discretion to refuse leave to issue or file the proposed application without an oral hearing. For these reasons, the application for leave to issue or file is dismissed.

Multicultural Affairs (2021) 95 ALJR 666 at 669 [3]; 392 ALR 186 at 188 per Edelman J.

6 Transcript of proceedings, *Hastwell v Federal Court of Australia and the Judges Thereof* [2021] HCATrans 161 at TS 4: 92-103 per Edelman J.