

HIGH COURT OF AUSTRALIA

STEWARD J

IN THE MATTER OF AN APPLICATION BY
RICHARD WOOLLEY FOR LEAVE TO ISSUE OR
FILE

[2024] HCASJ 32
Date of Judgment: 22 July 2024
C2 of 2024

ORDER

- Application for leave to issue or file the proposed writ of summons dated 19 January 2024 dismissed.*

Representation

The applicant is unrepresented

1 STEWARD J. The applicant sought to file a writ of summons dated 19 January 2024. On 25 January 2024,¹ Gleeson J directed the Registrar pursuant to r 6.07.2 of the *High Court Rules 2004* (Cth) to refuse to issue or file the writ without the leave of a Justice of the Court first had and obtained. The applicant now seeks that leave. The applicant relies on an affidavit dated 5 February 2024 sworn by the applicant.

2 The facts and legal claims underlying the applicant's proposed writ of summons can be stated briefly.

3 By the proposed writ of summons, the applicant contends, in substance, that the *Constitution* does not permit a "third tier of Government such as municipal councils".

4 The applicant is dissatisfied with the provision of services by the Central Goldfields Shire Council including, amongst other things, refusal to refund his permit application fee, excessive rates increases and "many other things grievously against the peace, order and good government of [his] municipal district". In particular, he challenges the constitutional validity of the council rates levied against his property.

5 The applicant seeks to bring an action against the State of Victoria in the Court's original jurisdiction "pursuant to ss 76(i) and 128 of the *Constitution*". He contends that the State has exceeded federal Constitutional power by creating a "third legislating making body the municipal councils, such as Central Goldfields Shire Council" which is not recognised or permitted under the *Constitution*. The applicant also contends that the State has failed to comply with failed referendum results from 1974 and 1988 which sought to, respectively, create a head of power under the *Constitution* in order to enable the Commonwealth to borrow money for, and to grant financial assistance to, local government bodies and, regarding the failed 1988 referendum, to recognise local government in the *Constitution*. The State's noncompliance with the referendum results makes a "mockery", it was said, of the referendum power in s 128 of the *Constitution*.

6 The applicant argues that the *Constitution* only recognises two legislative bodies, the Commonwealth and State Parliaments. Municipal councils are not recognised, and therefore it is *ultra vires* for the States to create or recognise them. He cites *Kable v DPP*² in support of his argument that legislative powers are limited to Commonwealth and State Parliaments and that a State cannot legislate to "undermine the constitutional scheme set up by Chapter III of the *Constitution*". He acknowledges that *Kable* related to the judiciary but argues that it has "equal

1 The direction was erroneously dated 25 January 2023.

2 *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51 at 115.

application to the legislative powers created under the [C]onstitution". The applicant contends that the States cannot delegate their "indivisible" legislative powers onto bodies they create, such as councils. State legislative power can only be exercised by the Victorian Parliament.

7 The applicant seeks declaratory relief. He seeks a declaration that State local government councils are constitutionally invalid, and further that the *Local Government Act 1989* (Vic) and the *Local Government Act 2020* (Vic) are constitutionally invalid or inoperable because they legislate for another legislative body under the State, which is not recognised in the *Constitution*.

8 As noted above, Gleeson J directed the Registrar to refuse to issue or file the writ of summons 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 the affidavit sworn by the applicant on 5 February 2024. The grounds stated largely repeat or supplement the substance of the proposed writ of summons.

9 The discretion conferred by r 6.07.3 of the *High Court Rules* to refuse leave to issue or file a document will ordinarily be exercised where the document appears "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".³ The concept of abuse of process, which cannot be confined within closed categories, encompasses "an attempt to invoke the original or appellate jurisdiction of the High Court on a basis that is confused or manifestly untenable".⁴ Exercise of the discretion to refuse leave to issue or file a document is appropriate "only in the clearest of cases".⁵

10 It is plain on the face of the proposed writ of summons that the applicant seeks to invoke this Court's jurisdiction on a basis that is "confused or manifestly untenable". Neither the proposed writ of summons, nor the affidavit filed in support of the application for leave to issue or file, disclose an arguable basis for the relief sought. The claims described in the proposed writ of summons would be an abuse of process if the document was filed. Accordingly, it should not be issued or filed.

11 It follows that the application must be rejected. I direct that the application for leave to issue or file the writ of summons dated 19 January 2024 be dismissed without an oral hearing.

3 *Re Young* (2020) 94 ALJR 448 at 451 [10]-[11] per Gageler J; 376 ALR 567 at 570; see also *High Court Rules*, r 6.07.1.

4 *Re Young* (2020) 94 ALJR 448 at 451 [13] per Gageler J; 376 ALR 567 at 570.

5 *Re Young* (2020) 94 ALJR 448 at 451 [13] per Gageler J; 376 ALR 567 at 570.