

HIGH COURT OF AUSTRALIA

STEWARD J

SHARYN AMANDA HALYDAY

PLAINTIFF

AND

DEPARTMENT OF HOME AFFAIRS & ORS

DEFENDANTS

[2025] HCASJ 47

Date of Judgment: 4 December 2025

C16 of 2025

ORDERS

- 1. The plaintiff's application for a constitutional or other writ filed on 18 August 2025 is summarily dismissed as an abuse of process, pursuant to rr 25.09.3(b) and 28.01.2(c) of the High Court Rules 2004 (Cth).*
- 2. The plaintiff pay the defendants' costs of the application.*

Representation

The plaintiff is unrepresented

Conditional appearance for the defendants (represented by Maddocks)

1 STEWARD J. On 18 August 2025, the plaintiff – who is self-represented – filed
in this Court an application for a constitutional or other writ, which names three
defendants: the Department of Home Affairs; the Minister for Home Affairs,
Immigration and Citizenship; and the Commonwealth of Australia (the "Present
Application").¹

2 For the following reasons, the Present Application is summarily dismissed
as an abuse of process, with costs.

Background

3 On 18 March 2024, the plaintiff commenced a proceeding (ACD14/2024)
against the Commonwealth in the Federal Court of Australia. The "central thrust"
of the plaintiff's claims in that proceeding was:²

"that the Commonwealth, by reason of its failure to administer migration
laws properly, breached a duty of care and is liable in tort for negligence in
allowing her former domestic partner, whom she refers to as N5, to obtain
a visa to come to Australia, and to retain a visa so as to be able to stay here.
She contends that this enabled him to do harm to her and to their child. She
seeks damages totalling more than \$4.5 million."

4 On 8 April 2025, Bromwich J heard and delivered judgment in respect of
an interlocutory application by the Commonwealth for summary judgment against
the plaintiff.³ In doing so, his Honour further summarised the plaintiff's claims in
the following terms:⁴

"[The plaintiff] seeks damages for the costs of treatment for trauma (for her
and her child), a loss of capacity to earn, and legal costs for proceedings in
family law proceedings in the Federal Circuit and Family Court of Australia
against N5. She also seeks orders that his visa be cancelled, that the
Commonwealth provide her child a written apology, that the assets of N5
and his immigration sponsors be frozen and that the Commonwealth
recover what are described as taxpayer funded monies from his immigration
sponsor's assets. ...

1 The defendants filed a conditional appearance pursuant to r 23.03.1 of the *High Court Rules 2004* (Cth).

2 *Halyday v The Commonwealth* [2025] FCA 330 at [2]; see also at [18]-[29].

3 *Halyday v The Commonwealth* [2025] FCA 330.

4 *Halyday v The Commonwealth* [2025] FCA 330 at [20]-[22].

2.

On a generous reading, [the plaintiff's] primary claim appears to be that the Commonwealth owed both her and her child a duty of care, which it breached in granting N5 a visa, failing to revoke it and failing to remove him from Australia, in circumstances where she alleges he caused herself and her child harm. In particular, [the plaintiff's] claim seems directed to visas granted to N5 in January 2013 and December 2014.

There is then a collection of other complaints that are more difficult to understand due to the way they have been described."

5 His Honour held that the proceeding was "hopeless and ... bound to fail" and "therefore has no reasonable prospect of success", and that "[n]one of [the] central failings [of the plaintiff's claims] can be remedied by re-pleading, noting that [the plaintiff] has had the benefit of assistance from an experienced and capable barrister of some seniority acting pro bono". Accordingly, his Honour ordered summary judgment in favour of the Commonwealth with costs.⁵

6 On 25 June 2025, the plaintiff lodged in the Federal Court an application for leave to appeal from Bromwich J's judgment, together with a supporting affidavit. On 27 June 2025, a National Duty Registrar of the Federal Court decided to refuse to accept those documents for filing pursuant to r 2.26 of the *Federal Court Rules 2011* (Cth), on the basis that the application was "an abuse of process, frivolous and vexatious". The Registrar's reasons for that decision explained that:

"This is because your application is not succinct and appears to include a series of submissions and assertions rather than legal grounds of review. It is not appropriate for an application document to contain submissions and assertions with respect to the case but should succinctly contain a cause of action '*properly stated*'. Further, the application does not set out the particular legislative provisions upon which you seek to rely upon with respect to each of the grounds of application pleaded in that document. As such, the affidavit document also suffers from same problem as the application document in that it too appears to set out a series of submissions from you about the conduct of the case which is not permissible to be included in such a document.

Please also note that you have not complied with all of the requirements for Form 18, in accordance with Rule 35.14(1), given that the application document is not complete with your signature."

7 Shortly thereafter, in July 2025, the plaintiff attempted to file in this Court an application for special leave to appeal from Bromwich J's judgment. However, that application was not accepted for filing in this Court. The Registry of this Court

5 *Halyday v The Commonwealth* [2025] FCA 330 at [45].

3.

advised the plaintiff that, pursuant to s 33(2) of the *Federal Court of Australia Act 1976* (Cth), it was not possible to appeal to this Court from a judgment of a single judge of the Federal Court exercising original jurisdiction.

The relief sought in the Present Application

8 By the Present Application, the plaintiff seeks (in addition to an extension of time) to invoke this Court's original jurisdiction in pursuit of seven proposed orders, which are expressed in the following terms:

"1. Make an Order that the Department of Home Affairs breached the Migration Act 1958, under s116 (1)(a) (aa)(b) (e)(ii) (f) (1AC) Sub D of Div 3, Part 2 Migration Act 1958 when they failed to cancel the visa and remove the unlawful non-citizen known as N5 from Australia back to England.

...

2. Make an Order that the Department of Home Affairs breached my and my child's Human Rights to safety and discriminated against my rights to be safe from N5 at time of the temporary spousal visa processing in 2013 and upon awarding a child sponsored visa with N5 in 2014 under AHRC Act 1986 s3(1) (aa) and s3(3)(a), the CRC Article 3(2), Article 4 and the Sex Discrimination Act 1984 s5(1)(c) and s5(3) and s942g.

...

3. Make an Order that the Department of Home Affairs and the Minister for Home Affairs, Immigration and Citizenship breached my and my child's Human Rights and discriminated against my rights to be safe from the unlawful non-citizen, N5, by failing to cancel N5's visa and deport back to England AHRC Act 1986 s3(1)(aa) and s3(3)(a), the CRC Article 3(2), Article 4 and the Sex Discrimination Act 1984 s5(1)(c) and s5(3) and s942g from 7 March 2023 as in Exhibit SAH C3.

...

4. Order a Warrant to be made pursuant to rule 11.03.1 for the purpose to detain and remove back to England the unlawful non-citizen N5 under s189(1) Migration Act 1958.

...

4.

5. Order that the costs awarded by the Federal Court of ACD 14/2024 to the Commonwealth on 8 April 2025 as in Exhibit SAH C8 be set aside.

...

6. Order the Confidentiality Order of 13 June 2025 (as in Exhibit SAH C8i) be set aside.

...

7. Order the Commonwealth meet the costs schedule detailed within the plaintiff's Statement of Claim to ACD 14/2024 (as in Exhibit SAH C1i)⁶ to be paid to the plaintiff within twenty-one days of the Order being made."

The Present Application is an abuse of process

- 9 The Present Application is an abuse of process, in that it seeks to invoke this Court's original jurisdiction "on a basis that is confused or manifestly untenable".⁷ That is so for the following reasons.

Circumventing appeal procedure (proposed orders 1-4 and 7)

- 10 The Proposed Application is principally directed towards revisiting the adverse outcome to the plaintiff's claims in the Federal Court. By proposed orders 1-4 and 7, the plaintiff in effect seeks to invoke the original jurisdiction of this Court to agitate claims which, as the defendants correctly submit, were largely "already considered and rejected by the Federal Court" and in doing so "circumvent the process by which judgments of the Federal Court can be challenged".

- 11 It is well-established that, as Nettle J observed in *Construction Forestry Mining and Energy Union v Director of the Fair Work Building Industry Inspectorate*, "it is inappropriate for the original jurisdiction of this Court to be invoked to challenge a decision amenable to appeal, whether or not that appeal is

6 I infer that the "costs schedule" to which the plaintiff refers in proposed order 7 is the so-called "schedule of costs and damages" set out in the Concise Statement filed in the Federal Court proceeding. This schedule outlined the compensation sought in the amount of approximately \$4.5 million. In effect, by proposed order 7, the plaintiff appears to seek relief by this application in the same quantum and on the same basis as in the Federal Court proceeding.

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

5.

subject to leave".⁸ This Court's original jurisdiction is not ordinarily a substitute for remedying erroneous judgments by way of appeal.⁹ While the plaintiff does not expressly seek an order that Bromwich J's summary judgment in the Federal Court proceeding be set aside, she now seeks to relitigate in this Court claims which are substantially duplicative to those which his Honour already considered and summarily dismissed. For those claims to succeed, the appropriate remedy was to be sought, not by invoking this Court's original jurisdiction, but by way of an appeal from Bromwich J's summary judgment – which here lies to the Full Court of the Federal Court of Australia, and only upon the grant of leave to appeal.¹⁰

12 The fact that the Federal Court previously refused to accept for filing an application for leave to appeal does not entitle the plaintiff to now circumvent proper appeal procedure and relitigate her previous (and unsuccessful) claims in this Court. Relevantly, that refusal was *not* on the basis that the Full Federal Court does not have jurisdiction to hear such an appeal, but rather that the "present form" of the application for leave to appeal rendered it "an abuse of process, frivolous and vexatious".

13 Nor is the plaintiff assisted in this respect by the fact that she previously attempted unsuccessfully to file a special leave application in this Court. As the plaintiff was already advised, this Court does not have jurisdiction to hear an appeal from Bromwich J's judgment;¹¹ the plaintiff cannot circumvent that lack of appellate jurisdiction by invoking this Court's original jurisdiction instead.

Challenge to costs order (proposed order 5)

14 By proposed order 5, the plaintiff seeks to challenge the costs order made by Bromwich J in parallel with summary judgment. Like any challenge to his Honour's principal order for summary judgment, a challenge to his Honour's collateral costs order ought to be advanced by way of appeal to the Full Federal Court. The plaintiff is not, in the circumstances addressed above, entitled to invoke this Court's original jurisdiction to set aside the costs order. The plaintiff has identified no arguable basis for the relief here sought.

8 (2016) 91 ALJR 1 at 8 [22]; 338 ALR 360 at 367.

9 See, for example, *Nasir v Federal Court of Australia* [2025] HCASJ 21 at [32]; *Re Meyer* [2025] HCASJ 22 at [16].

10 *Federal Court of Australia Act 1976* (Cth), ss 24(1)(a), 24(1A), 25(1).

11 Section 33(2) of the *Federal Court of Australia Act 1976* (Cth) provides that "[e]xcept as otherwise provided by another Act, an appeal shall not be brought to the High Court from a judgment of the [Federal Court] constituted by a single Judge exercising the original jurisdiction of the [Federal Court]".

Challenge to confidentiality order (proposed order 6)

15 By proposed order 6, the plaintiff seeks to challenge a confidentiality order made by the Federal Court on 13 June 2025 (i.e. after the summary judgment was delivered). That confidentiality order provides that "[e]xcept with leave of the [Federal] Court, and after an opportunity to be heard has been afforded to the applicant and the respondent, access to documents filed in this proceeding not be granted to persons other than the parties to the proceeding".

16 This order was made by consent – and indeed, was apparently made on the application of the plaintiff herself. On the materials before this Court, it is unclear why the plaintiff now seeks to have this order set aside. In any event, the plaintiff has not articulated any arguable basis for the order to be set aside by this Court. In the first instance, whether this order ought to be set aside would be a matter to be considered by the Federal Court.

Disposition

17 For the foregoing reasons, the Present Application is summarily dismissed as an abuse of process with costs, pursuant to rr 25.09.3(b) and 28.01.2(c) of the *High Court Rules 2004* (Cth).