

HIGH COURT OF AUSTRALIA

GLEESON J

IN THE MATTER OF AN APPLICATION BY
JAN MAREK KANT FOR LEAVE TO ISSUE OR
FILE

[2025] HCASJ 16
Date of Judgment: 19 March 2025
M16 of 2025

ORDER

- The application dated 3 March 2025 for leave to issue or file the application for a constitutional or other writ dated 21 February 2025 is refused.*

Representation

The applicant is unrepresented

1 GLEESON J. By application dated 3 March 2025, the applicant, Jan Marek Kant, seeks leave to issue or file an application for a constitutional or other writ dated 21 February 2025, which names as defendant the United Nations High Commissioner for Human Rights. On 28 February 2025, pursuant to r 6.07.2 of the *High Court Rules 2004* (Cth), Gordon J made a direction to the Registrar to refuse to issue or file the proposed application without the leave of a Justice first had and obtained by the party seeking to file it.

2 The current application complies with r 6.07.3 and is supported by an affidavit affirmed by the applicant on 3 March 2025. This affidavit, in turn, annexes two affidavits, each affirmed on 11 December 2024.

3 For the following reasons, leave to file the proposed application should be refused without listing the application for a hearing.

Principles to be applied

4 The discretion to refuse the leave sought is to be exercised by reference to the criteria set out in r 6.07.1, namely whether the proposed application "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".¹ Implicit in the requirement that a document the subject of an application under r 6.07.3 be considered "on its face" is that such an application falls to be determined on the papers,² that is, without an oral hearing. While there are no "closed categories" of what amounts to an abuse of process, that concept captures attempts to invoke the jurisdiction of the Court on bases that are confused or untenable.³

Consideration

5 The applicant has lodged two complaints with the Office of the United Nations Commissioner for Human Rights. The final relief sought by the applicant comprises a writ or an injunction requiring the defendant [to] do all things necessary to have: (1) the applicant's complaint UR/CAT/24/AUS/13 ("the first complaint"); and (2) UR/CCPR/24/AUS/22 ("the second complaint") resolved without delay.

1 *Re Young* (2020) 94 ALJR 448 at 451 [11]; 376 ALR 567 at 570.

2 *Re Young* (2020) 94 ALJR 448 at 451 [12]; 376 ALR 567 at 570; *Re Simmonds* [2020] HCA Trans 34.

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

2.

6 The applicant identifies s 33 of the *Judiciary Act 1903* (Cth), s 75 of the Constitution, cl 29 of the *Magna Carta 1297* and s 12B of the *Privacy Act 1988* (Cth) as the source of this Court's jurisdiction to hear the proposed application.

7 Section 33(1)(e) of the *Judiciary Act* relevantly empowers this Court to make orders or direct the issue of writs of mandamus. Section 75(i) of the Constitution relevantly confers original jurisdiction on this Court in all matters arising under any treaty. Clause 29 of the *Magna Carta* states that no "free man" shall suffer certain harms "except by the lawful judgment of his equals or by the law of the land". Section 12B(2) of the *Privacy Act* relevantly provides:

"(2) This Act also has the effect it would have if its operation in relation to regulated entities were expressly confined to an operation to give effect to the following:

(a) the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23), and in particular Articles 17 and 24(1) of the Covenant;"

8 In the first complaint, the applicant alleges contraventions of the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* ("the Convention"). In the second complaint, the applicant alleges contraventions of the Optional Protocol to the *International Covenant on Civil and Political Rights* ("the Optional Protocol").

9 The applicant contends that the defendant has a duty to bring individual complaints to resolution in accordance with Art 22 of the Convention and the Optional Protocol.

10 Neither Art 22 of the Convention nor the Optional Protocol impose a duty on the defendant to resolve the relevant complaints without delay. The applicant has not identified any other basis for finding a duty owed by the defendant to resolve the complaints without delay. Accordingly, on the face of the application, the applicant is seeking to invoke this Court's jurisdiction on a basis that is "manifestly untenable".⁴ Nothing in the proposed application, nor the supporting affidavit, discloses an arguable basis for the relief sought. The proposed application would be an abuse of process if the document was filed.

11 The application dated 3 March 2025 for leave to issue or file the application for a constitutional or other writ dated 21 February 2025 is refused.

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