

**COURT OF APPEAL**

**MUIR JA**

**Appeal No 6154 of 2009  
SC No 4342 of 2009**

**GARY STEWART ANDERSON**

**Appellant/Respondent**

**and**

**DOROTHY HELENA ANDERSON**

**Respondent/Applicant**

**BRISBANE**

**DATE 18/6/2009**

**JUDGMENT**

**MUIR JA:** Mr Anderson, you're appearing on your own behalf on this application?

**APPELLANT:** That's correct.

**MUIR JA:** Thank you.

**MR McQUADE:** Good morning, your Honour.

**MUIR JA:** Mr McQuade.

**MR McQUADE:** Yes, Mr McQuade, I appear for the respondent to the application Dorothy Helena Anderson, instructed by Northside Solicitors Pty Ltd and Mr Mark Fleming, principal of that firm.

...

**MUIR JA:** The respondent to this application by originating application filed on 7 May 2009 sought orders for delivery up of possession of land at Samford Road, Enoggera. The evidence reveals that the applicant was in possession of the land at the time and that the registered proprietors were the respondent and her husband. He supported the application.

Before the matter came on for hearing it was adjourned. After the hearing on 4 June 2009 the learned primary Judge ordered that the applicant deliver up possession of the land within

seven days and that he pay the respondent's costs of and incidental to the application fixed in the sum of \$17,203.60.

The applicant filed a notice of appeal stating the following grounds "bias, coaching, denial of adjournment".

On 11 June 2009 he made application to this Court for a stay of the orders made by the primary Judge for a period of no less than 90 days. The application also sought the grant of an adjournment to the applicant "for the next hearing be allowed for a period of now less than 70 days". The purpose of that application, it seems, was to enable the applicant to bring proceedings before the Guardianship and Administration Tribunal and have those proceedings determined.

He had sought an adjournment at first instance to enable him to take this course but did not adduce any evidence whatsoever. Not surprisingly the primary Judge rejected his request that the matter before him be adjourned so that the applicant could pursue some collateral application before a different tribunal, without I might add, any explanation as to why he had not set in train any such steps before the hearing before the primary Judge.

As for the allegations of bias and coaching there is simply no evidence before me which could permit me to conclude that there was even the faintest substance in any such contention. One thing that is obvious about the notice of appeal is that the applicant would not on appeal be attempting to challenge the merits of the determination of the primary Judge.

There is no evidence that the applicant has any legal right to be in possession of the subject property. There is, however, evidence that his presence on the property is the cause of cost, inconvenience and potential damage.

If a stay is granted it would seem that its only consequence would be to draw out the inevitable and to offer, perhaps, the opportunity to the applicant to attempt to litigate a case he

should have litigated at first instance. No security is offered by him and no undertaking is offered either to meet any of the costs which are accruing in respect of the subject property.

In short, the application is entirely without merit. I order that the application be dismissed with costs.

**MR MCQUADE:** Your Honour, I'd just ask in paragraph 27 on page 60, ask for indemnity costs on the application.

**MUIR JA:** Yes. Have you anything to say in response to paragraph 27, Mr Anderson?

**APPELLANT:** Sorry, your Honour, which document is that you're referring to?

**MUIR JA:** Of the respondent's outline of argument. They ask for costs on an indemnity basis. Yes? I'm waiting.

**APPELLANT:** Can I just have two minutes to consider that, your Honour?

**MUIR JA:** No.

**APPELLANT:** Here we go again. I understand that it was a-----

**MUIR JA:** You were put on notice-----

**APPELLANT:** Yeah.

**MUIR JA:** -----that this application for indemnity costs would be made when you got the outline.

**APPELLANT:** I did not - the original costs to me weren't reasonable at all, your Honour. My mother - because-----

**MUIR JA:** Yes. We're dealing with the costs of this application. There's no point in going back in history.

**APPELLANT:** So-----

**MUIR JA:** Why shouldn't you be required to pay the costs of this application on an indemnity basis?

**APPELLANT:** All right. I don't think I should have to pay that, your Honour, honestly.

**MUIR JA:** All right.

**APPELLANT:** It was a reasonable appeal as far as I'm concerned.

**MUIR JA:** Thank you. I order that the costs be paid on the indemnity basis, the reason being, as I have said, the application was entirely lacking in merit, there was no evidence which could lead any Court properly instructed to grant the application. The points put forward in support of it were entirely lacking in merit. Adjourn the Court.