

SUPREME COURT OF QUEENSLAND

CITATION: *Mbuzi v Hall & Ors* [2010] QCA 253

PARTIES: **JOSIYAS ZIFANANA MBUZI**
(applicant)
v
ELIZABETH HALL
(first respondent/not a party to the application)
AUSTRALIAN ASSOCIATED MOTOR INSURERS LIMITED
(second respondent)
CLIFFORD ROE CHUTTER
(third respondent)
CHERREL HIRST
(fourth respondent)
MARTIN DOUGLAS EBERLAIN KRIEWALDT
(fifth respondent)
CHRISTOPHER SKILTON
(sixth respondent)

FILE NO/S: Appeal No 8519 of 2009
SC No 6243 of 2009

DIVISION: Court of Appeal

PROCEEDING: Miscellaneous Application – Civil

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 17 September 2010

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

JUDGE: McMurdo P

ORDER: **Application filed in the Court of Appeal on 9 September 2010 is dismissed**

CATCHWORDS: PROCEDURE – QUEENSLAND – PROCEDURE UNDER UNIFORM CIVIL PROCEDURE RULES AND PREDECESSORS – SUMMARY JUDGMENT – where applicant filed an application in this Court on 9 September 2010 seeking to set aside three Court of Appeal judgments under *Uniform Civil Procedure Rules 1999 (Qld)* (UCPR) r 668 – where second to sixth respondents filed an application dated 16 July 2010 in the Trial Division seeking that the applicant not be allowed to file any further application in relation to the proceedings without leave of the Court – where the application was heard on 31 August 2010 with the decision reserved but interim orders made including that the

applicant “not bring any Application in these proceedings or in relation to these proceedings or the relief sought in them, except with the leave of the Court, prior to the determination of the Application heard on 31 August 2010” – whether it is appropriate for the Court to dismiss the application under r 389A(5) UCPR without hearing from the applicant

Uniform Civil Procedure Rules 1999 (Qld), r 389A(5)

SOLICITORS: The applicant appeared on his own behalf
Rodgers Barnes & Green for the respondents

- [1] **McMURDO P:** The applicant, Josiyas Zifanana Mbuzi, filed an application in this Court on 9 September 2010 to set aside Court of Appeal judgments of 24 December 2009, 4 February 2010 and 19 February 2010 under *Uniform Civil Procedure Rules* (UCPR) r 668.
- [2] This Court's orders of 24 December 2009,¹ 4 February 2010² and 19 February 2010³ all concerned a proceeding commenced in the Trial Division of this Court: BS6243 of 2009. The order of 4 February 2010 dismissed Mr Mbuzi's application under UCPR r 668 to re-open his appeal the subject of orders on 24 December 2009. The order of 19 February 2010 concerned a costs order against Mr Mbuzi in respect of his application resulting in the order of 4 February 2010.
- [3] Mr Mbuzi's application filed in this Court 9 September 2010 was apparently served on the respondents. On 10 September 2010, the solicitors for the second to sixth respondents wrote to the registrar of the Court of Appeal pointing out the following matters.
- [4] The second to sixth respondents filed an application dated 16 July 2010 in the Trial Division of this Court in proceeding BS6243 of 2009 under UCPR r 389A for an order that Mr Mbuzi not be allowed to file any further application in relation to BS6243 of 2009 without leave of the Supreme Court. The application was heard on 31 August 2010 by Applegarth J who reserved his decision but made interim orders including an order that in BS6243 of 2009, Mr Mbuzi "not bring any Application in these proceedings or in relation to these proceedings or the relief sought in them, except with the leave of the Court, prior to the determination of the Application heard on 31 August 2010".
- [5] The solicitors for the second to sixth respondents contend that Mr Mbuzi's application filed on 9 September 2010 was in breach of Applegarth J's order of 31 August 2010. They request that it be summarily dismissed on the papers so as to avoid the second to sixth respondents being put to the further expense of yet another appearance in the Court of Appeal; so much is provided for in UCPR r 389A(5).
- [6] UCPR r 389A relevantly provides:
- "389A Restricting applications that are frivolous, vexatious or abuse of court's process**
(1) This rule applies if the court is satisfied that a party (the *relevant party*) to a proceeding (the *existing proceeding*) has made more than

¹ *Mbuzi v Hall & Ors* [2009] QCA 405.

² *Mbuzi v Hall & Ors* [2010] QCA 5.

³ *Mbuzi v Hall & Ors* [2010] QCA 23.

1 application in relation to the existing proceeding that is frivolous, vexatious or an abuse of process.

(2) The court may make an order under this rule on application by a party to the existing proceeding or on its own initiative.

(3) The court may order that—

(a) the relevant party must not make a further application in relation to the existing proceeding without leave of the court; or

(b) the relevant party must not start a similar proceeding in the court against a party to the existing proceeding or against a party to the existing proceeding and any other person without leave of the court.

...

(5) A court may dismiss an application made to the court in contravention of an order made under subrule (3) or (4) without hearing the applicant or another party to the application.

...

application in relation to the existing proceeding includes an appeal in relation to the existing proceeding.

..."

- [7] Mr Mbuzi's application filed in the Court on 9 September 2010 is plainly in contravention of Applegarth J's interim order made under UCPR r 389A(3) on 31 August 2010. In those circumstances, it is entirely appropriate for this Court to dismiss that application under UCPR r 389A(5) without hearing from Mr Mbuzi.

ORDER:

The application filed in the Court of Appeal on 9 September 2010 is dismissed.