SUPREME COURT OF QUEENSLAND

CITATION:	*Cooper v Mbuzi* [2012] QSC 105
PARTIES:	**GREGORY R COOPER** **(applicant)** **v** **JOSIYAS ZIFANANA MBUZI** **(respondent)**
FILE NO:	BS7491 of 2011
DIVISION:	Trial Division
PROCEEDING:	Originating application
DELIVERED ON:	24 April 2012
DELIVERED AT:	Brisbane
HEARING DATE:	17 November 2011
JUDGE:	Mullins J

ORDER:

1. **It is declared that the respondent Josiyas Zifanana Mbuzi is a person who has frequently instituted or conducted vexatious proceedings in Australia within the meaning of s 6 of the *Vexatious Proceedings Act* 2005 (the Act).**
2. **Pursuant to s 6(2)(b) of the Act, the respondent is prohibited from instituting proceedings in any Queensland Court, apart from an appeal from these orders.**
3. **Pursuant to s 6(2)(a) of the Act, proceeding BS5009 of 2011 commenced in the Supreme Court of Queensland by the respondent is stayed.**
4. **The issue of costs of the application is adjourned to a date to be fixed.**
5. **It is directed that:**
   - **(a) within 7 days of the date of which these reasons are published the applicant may give notice in writing to the respondent whether he seeks an order pursuant to s 6(2)(a) of the Act staying proceeding BS9129 of 2011 (*Mbuzi v Redlich*) and, if so, identify the affidavits and submissions that have been filed in any proceeding that are relied on for seeking the order;**
   - **(b) if such notice is given, within 21 days of the date on which these reasons are published the**

respondent may file and serve on the applicant any affidavit that he wishes to rely on that are not yet filed in any proceeding and any submissions that he wishes to make on whether proceeding BS9129 of 2011 should be stayed pursuant to s 6(2)(a) of the Act and identifying the affidavits and submissions relied on;

(c) within 7 days of the service of the respondent's submissions, the applicant may file and serve on the respondent any submissions in response;

(d) unless either party in the written submissions requests a hearing, or a hearing before a judge other than Mullins J, the issue of whether proceeding BS9129 of 2011 should be stayed pursuant to s 6(2)(a) of the Act will be determined on the papers.

6. Liberty to either party to apply on two days' notice in writing to the other in relation to orders 4 and 5.

CATCHWORDS: PROCEDURE – MISCELLANEOUS PROCEDURAL MATTERS – VEXATIOUS LITIGANTS AND PROCEEDINGS – where Crown Solicitor applies for vexatious proceedings orders under *Vexatious Proceedings Act* 2005 (Qld) against the respondent – whether vexatious proceedings instituted frequently – whether discretion should be exercised to make vexatious proceedings orders

Uniform Civil Procedure (Fees) Regulation 2009, s 10A
Uniform Civil Procedure Rules 1999, r 389A, r 668
Vexatious Proceedings Act 2005, s 5, s 6, s 7, s 11

Attorney-General v Wentworth (1988) 14 NSWLR 481, considered
Re Cameron [1996] 2 Qd R 218, considered
Hambleton v Labaj [2011] QCA 17, considered
Jones v Cusack (1992) 66 ALJR 815, 816, followed

COUNSEL: D D Keane for the applicant
The respondent appeared in person

SOLICITORS: G R Cooper Crown Solicitor for the applicant

[1] The Crown Solicitor brings this proceeding against Mr Mbuzi for orders under s 6 of the *Vexatious Proceedings Act* 2005 (the Act). Mr Mbuzi who appears for himself opposes the making of the orders.

[2] The ground on which the Crown Solicitor relies for making the application is that Mr Mbuzi is a person who has frequently instituted or conducted vexatious proceedings in Australia: s 6(1)(a) of the Act.

[3] In particular, the Crown Solicitor asserts that Mr Mbuzi has conducted the proceeding in BS5009 of 2011 (*Mbuzi v Finger & Ors*) and Appeal No 7520 of 2011 (*Mbuzi v Favell*) vexatiously and the Crown Solicitor relies on the nature of, or the manner in which Mr Mbuzi has conducted, the following proceedings and specific findings made in them that Mr Mbuzi had either commenced vexatious proceedings or conducted them vexatiously:

(a) *Mbuzi v Favell* [2007] QCA 393 (*Favell* appeal)
(b) *Mbuzi v Hall & Ors* [2009] QCA 405 (*Hall* appeal)
(c) *Mbuzi v The University of Queensland* [2010] QSC 153 (*UQ* judicial review)
(d) *Mbuzi v Hornby* [2010] QCA 186 (*Hornby* appeal)
(e) *Mbuzi v Hall & Anor* [2010] QSC 359 (*Hall* security for costs application)
(f) *Mbuzi v University of Queensland* [2010] QCA 336 (*UQ* appeal)
(g) *Mbuzi v Hall & Ors* [2010] QCA 356 (*Hall* security for costs appeal).

[4] Apart from the proceedings referred to in the preceding paragraph, the Crown Solicitor obtained information from the court files and exhibited material relating to BS3871 of 2010 (*Mbuzi v Murray*) and other proceedings between Mr Mbuzi and Mr Favell.

[5] The approach primarily taken by the Crown Solicitor on the hearing of this application was to rely on the statements made by Judges in the course of reasons for judgment about Mr Mbuzi's conduct of the relevant litigation. I queried Mr Keane of counsel who appeared for the Crown Solicitor during the hearing whether more was required from the Crown Solicitor to succeed in the application than merely relying on the recitation of passages from reasons for judgment and suggested that it was necessary to consider the substance of those proceedings. Mr Keane indicated that the Crown Solicitor also seeks to rely on the substance of these proceedings in support of its contention that the proceedings were vexatious or conducted vexatiously. That was, in fact, consistent with the approach taken by the Crown Solicitor in the affidavits filed in support of the application.

[6] I will therefore summarise the nature of each of these proceedings and identify relevant aspects of the manner in which Mr Mbuzi has conducted the proceedings, in addition to referring to the findings that are relied on by the Crown Solicitor.

Favell **appeal**

[7] Mr Favell sued Mr Mbuzi in the District Court for defamation and was successful in obtaining judgment after trial: *Favell v Mbuzi* [2005] QDC 356. Costs were subsequently awarded against Mr Mbuzi for the reasons set out in *Favell v Mbuzi* [2005] QDC 383. Mr Mbuzi did not then seek to appeal the judgment for damages and costs. Instead, Mr Mbuzi applied to have the judgment and the order for costs set aside pursuant to r 668 of the *Uniform Civil Procedure Rules* 1999 (*UCPR*). That application was dismissed with costs by another judge of the District Court on 12 March 2007. The *Favell* appeal dealt with an application by Mr Mbuzi for leave

to appeal from the decision given in the District Court on 12 March 2007. The application for leave to appeal was refused and Mr Mbuzi was ordered to pay Mr Favell's costs assessed on an indemnity basis for the reasons set out in paragraph [22] of the judgment:

> "[22] Proceedings under *UCPR 668* were inappropriate in this matter and were correctly dismissed by the learned judge below. The application for leave to appeal should be dismissed, and Mr Mbuzi should pay Mr Favell's costs of and incidental to this appeal. Because of the complete lack of merit in both the original application and this application, and the unjustifiably offensive manner in which Mr Mbuzi had conducted them, these should be assessed on an indemnity basis."

[8] Mr Mbuzi applied for special leave to appeal the Court of Appeal's decision on the *Favell* appeal, but that was dismissed on the papers on the basis that there no prospects of a successful appeal: [2008] HCASL 243.

[9] Mr Mbuzi had also commenced an application for judicial review after the defamation proceeding in which he sought to challenge the directions that were made in the course of the trial relating to the sealing of a letter that he had written and an affidavit which he had filed in support of an application to set aside the judgment by default originally entered in the defamation proceeding. Mr Favell applied for summary dismissal of the judicial review application, that was successful and the application was dismissed. Mr Mbuzi then applied for leave to appeal to the Court of Appeal against the summary dismissal of his application for judicial review.

[10] On the basis that the *Judicial Review Act* 1991 was expressly excluded from decisions made under the *District Court of Queensland Act* 1967, Mr Mbuzi's application for judicial review could not succeed. Mr Mbuzi then sought to argue before the Court of Appeal that the District Court judge had no power to order that the material be sealed on the file, but that application was also dismissed on the basis that there was no utility in any appeal against the directions, as it would have no impact on the final judgment that was given against him after the defamation trial and he had no legitimate interest in having the documents unsealed. The orders made by the Court of Appeal were that Mr Mbuzi's application was dismissed and he was ordered to pay Mr Favell's costs: *Mbuzi v A-G (Qld) & Favell* [2006] QCA 381.

[11] Mr Mbuzi then applied for special leave to appeal to the High Court in respect of the decision of the Court of Appeal dismissing his application for leave to appeal against the summary dismissal of his judicial review application. The High Court dismissed the application for special leave on the papers on the basis that there was "no reason to doubt the correctness of the conclusions reached in the Court of Appeal": [2008] HCASL 1.

***Hall* appeal**

[12] Mr Mbuzi appeared before Magistrate Hall as referee in relation to a Small Claims Tribunal claim for $3,276 under a policy for home building and contents insurance against the insurer AAMI but which also joined four directors of the insurer as respondents who were being described as being "sued in their representative capacity for the Respondent." When Magistrate Hall put to Mr Mbuzi that his dispute was solely with AAMI and not with the directors, he responded:

> "Your Honour, I would not like to waste the Court's time in terms of who attends, who doesn't. As a way of background, the Act requires me, if the trader - the trader is described as if himself or herself as persons provide goods and services, and if the trader is a company, under law I'm required to go and do search of that company to identify the names and addresses of people of that company, and that's what I've done. The people that I've included are named on that list as associated with that company. The submissions given to me confirm that, that they are officeholders. Now, if the law says it relates to slap *(sic)* - to somebody who holds himself or her - herself, which to me - and that is directly taken from the Act - relates to individuals, those individuals have to be identified. I identified them. However, I'm not one to dwell on this, because what I want is a claim against the company and I included the people because those are the people that who are identified here."

[13] Magistrate Hall disclosed that she knew two of these directors, but when Mr Mbuzi asked her to disqualify herself, she refused to do so and refused Mr Mbuzi's application for an adjournment to after documents were produced at the hearing by AAMI's representative. During the course of the hearing Magistrate Hall ruled that the four directors should be removed as respondents and the sole respondent be AAMI. Magistrate Hall proceeded to hear the claim and dismissed it. Mr Mbuzi applied to this Court for judicial review of Magistrate Hall's refusal to disqualify herself and to grant an adjournment. Magistrate Hall, the insurer and the four directors were named as respondents in this Court to the judicial review application.

[14] The insurer and its directors applied for summary dismissal of the application. On 9 July 2009, White J dismissed the application for judicial review against the directors on the basis that Mr Mbuzi did not have any contractual arrangement with the four directors as his contract was with AAMI and ordered that Mr Mbuzi pay the directors' costs, excluding the costs of the hearing on 29 June 2009. (Because White J did not summarily dismiss AAMI's claim, Mr Mbuzi characterised this as success on his part.)

[15] The *Hall* appeal arose out of Mr Mbuzi's application for leave to appeal against White J's decision. For the purpose of the *Hall* appeal, the respondents obtained a transcript of the hearing before Magistrate Hall which showed that she ruled that the four directors should be removed as respondents and that the sole respondent would be the insurer. According to Fryberg J (who wrote the leading judgment) at [38] of the reasons in the *Hall* appeal, that meant that the directors should never have been respondents in the judicial review proceeding, as they had no interest in upholding the subject matter of that proceeding. The application for leave to appeal was therefore dismissed on the basis that it would be futile, as the appeal would fail,

because the four directors were not proper parties to the review proceeding in any case.

[16] The Court of Appeal was unanimous in dismissing Mr Mbuzi's application in the *Hall* appeal, but the majority (McMurdo P and Fryberg J) ordered that Mr Mbuzi pay the respondents' costs of the application to be assessed on the standard basis. That was because there was fault on the part of the respondents as well as Mr Mbuzi in not bringing the court's early attention to the removal of the directors as parties in the Tribunal proceeding (at [3] and [45]-[47] of the reasons in the *Hall* appeal). McMeekin J dissented on the costs order and would have ordered costs against Mr Mbuzi on an indemnity basis. The Crown Solicitor relies in this proceeding on McMeekin J's reasons in favour of indemnity costs at [59] and [60] of the reasons delivered in the *Hall* appeal. Although some support for McMeekin J's reasons for ordering indemnity costs is found in the comments of McMurdo P at [3] of the reasons, it is not appropriate in this application to rely on McMeekin J's reasons, when the other members of the court concluded that costs against Mr Mbuzi should be assessed on the standard basis.

[17] Mr Van Oudtshoorn who was the solicitor for the respondents in the *Hall* appeal has deposed to obtaining an assessment of the respondent's costs in accordance with the costs order of the Court of Appeal for the total sum of $14,399.93 and that, despite demands, Mr Mbuzi has failed to pay those assessed costs. Mr Van Oudtshoorn also provided other details about applications made in the judicial review proceeding, costs orders made against Mr Mbuzi and his failure to pay those costs.

[18] During the hearing of this proceeding on 17 November 2011, Mr Mbuzi objected to the Crown Solicitor relying on Mr Van Oudtshoorn's affidavit as it was Mr Van Oudtshoorn's firm that was shown as the solicitors who had prepared the affidavit and not the Crown Solicitor. Mr Van Oudtshoorn deposed to the affidavit being prepared by him at the request of the Crown Solicitor. There was nothing out of order in such a request, as Mr Van Oudtshoorn was able to provide relevant information for this proceeding about the costs orders obtained by the respondents in the *Hall* appeal and related matters against Mr Mbuzi. Mr Van Oudtshoorn's affidavit was filed in the court on behalf of the Crown Solicitor and the fact that the affidavit was prepared by Mr Van Oudtshoorn was not a reason to preclude the Crown Solicitor from relying on the affidavit. It was appropriate for the Crown Solicitor to obtain supporting evidence from the solicitors for the respondents in the *Hall* appeal.

***UQ* judicial review**

[19] On 27 August 2009 Mr Mbuzi who had been a part time PhD student at the University of Queensland applied for judicial review of the decision made by the University's Disciplinary Board on 24 August 2007 that found him guilty of misconduct and suspended him for 12 months. Mr Mbuzi instituted an appeal to the Discipline Appeals Committee on 12 September 2007, but did not pursue that appeal. Mr Mbuzi amended his application for judicial review including seeking an extension of time for making the application. The hearing of the matter took place

over two days before the Chief Justice. The Chief Justice in his reasons in the *UQ* judicial review at [13] refused the extension of time that Mr Mbuzi required for the hearing of the application, but dealt with the merits of Mr Mbuzi's grounds for judicial review, and found that none of the grounds relied on were established. The Chief Justice therefore acceded to the respondents' application for the dismissal of Mr Mbuzi's amended application for judicial review. In addition the Chief Justice noted that adequate provision was made by law, other than the *Judicial Review Act* 1991, for the review of the impugned decision by the Discipline Appeals Committee (at [25]) and that Mr Mbuzi's application was properly characterised as vexatious (at [51]). Costs were ordered against Mr Mbuzi. The Crown Solicitor relies on the observations made by the Chief Justice at paragraph [50]:

> "None of the grounds advanced by the applicant was established. There was no evidence of breach of natural justice, failure to follow applicable procedures, excess of authority, improper exercise of power, error of law, absence of evidentiary foundation for decisions made, bad faith or improper motive or of one officer acting as the cipher or at the behest of others."

***Hornby* appeal**

[20] On 30 July 2009 Mr Mbuzi was found guilty of one charge of committing a public nuisance and one charge of contravening a police officer's direction, both of which offences were committed on 16 September 2005. Mr Mbuzi was convicted and fined $500 for the nuisance offence and $300 for the contravention offence. The trial of these charges had commenced in the Magistrates Court on 29 July 2009. At the commencement of the trial, Mr Mbuzi had sought an adjournment which was refused. During the lunch break, he filed in this Court an application for judicial review in relation to the Magistrates Court trial. He then sought an adjournment of the trial, pending the determination of the Supreme Court application. The Magistrate refused that application, but adjourned at 3:15pm that day for a 9:15am start the following day. Mr Mbuzi did not attend at the appointed time on 30 July 2009 and the trial proceeded in his absence. Mr Mbuzi had filed an application in this Court for an order staying the Magistrates Court proceeding, but there was no evidence that the Magistrate had notice of that application, before he gave judgment in the summary trial. The Supreme Court applications brought by Mr Mbuzi in relation to that Magistrates Court trial were subsequently dismissed.

[21] Mr Mbuzi then appealed to the District Court against conviction and penalty. The District Court judge upheld the convictions and the penalties, including the recording of convictions. The *Hornby* appeal concerned Mr Mbuzi's application for leave to appeal from the judgment of the District Court. The reasons that Mr Mbuzi specified as supporting the grant of leave were that the conviction was made in his absence, the District Court judge merely accepted the Magistrate's finding, the particulars for the offence do not constitute the offences of which he was convicted and the decision of the judge was contrary to evidence on the record. The Court of Appeal found that the District Court judge had considered all the points that were raised by Mr Mbuzi to challenge the Magistrate's findings. The Court of Appeal found that there was no basis for a grant of leave to appeal and the application was refused.

[22] Proceeding BS3871 of 2010 was a judicial review proceeding initiated by Mr Mbuzi against the Registrar of the State Penalties Enforcement Registry (SPER) in relation to notices of intention to suspend Mr Mbuzi's driver's licence for unpaid fines of which two of the fines were the subject of the *Hornby* appeal. At the time of hearing the application under the Act, I also heard Mr Mbuzi's application for a costs order in respect of proceeding BS3871 of 2010. Mr Mbuzi did have some success in that proceeding and, notwithstanding Mr Murray's opposition to any costs order being made in Mr Mbuzi's favour, Mr Mbuzi was successful in obtaining a limited costs order for the reasons set out in *Mbuzi v Murray* [2012] QSC 83.

Hall security for costs application

[23] On 5 July 2010 Mr Mbuzi filed an amended application for judicial review in the same proceeding in this Court concerning Magistrate Hall's decision, naming Magistrate Hall as the first respondent, AAMI as the second respondent and the same four directors as the third to sixth respondents, despite White J's decision which had been upheld in the *Hall* appeal. AAMI and the four directors then applied in the proceeding for orders pursuant to r 389A of the *UCPR* that Mr Mbuzi not file any further applications in relation to the application for judicial review without the leave of the court and for security for costs.

[24] After the *Hall* appeal Mr Mbuzi unsuccessfully applied for a stay of the judgment of the Court of Appeal and relief pursuant to r 668 of the *UCPR*. That application was dismissed by Chesterman JA on 4 February 2010 who on 19 February 2010 ordered Mr Mbuzi to pay the costs of AAMI and the directors of the application assessed on the indemnity basis: *Mbuzi v Hall & Ors* [2010] QCA 5 and [2010] QCA 23. (Mr Mbuzi applied for special leave to appeal to the High Court against the Court of Appeal's judgment in the *Hall* appeal and the decisions of Chesterman JA made on 4 and 19 February 2010. Leave was refused on 17 June 2010 on the papers on the basis that there were no prospects of success in appealing the Court of Appeal's refusal to give leave to appeal: [2010] HCASL 121. On 2 August 2010 the respondents had their costs assessed pursuant to the order of Chesterman JA in the sum of $6,612.50. Mr Mbuzi has failed to pay those costs.

[25] The directors had the costs ordered by White J on 9 July 2009 assessed by a costs assessor. On 26 February 2010 the Registrar made an order that Mr Mbuzi pay the directors' costs in the sum assessed by the costs assessor, which was $13,556.50. Mr Mbuzi applied for an order that the Registrar's costs order be set aside, varied or stayed and for the Registrar to refer the matter to a Judge. That application was dismissed by Alan Wilson J with costs to be assessed on the standard basis. Mr Mbuzi applied for leave to appeal in Appeal No 5886 of 2010 in respect of the orders made by Alan Wilson J. Mr Mbuzi also filed an application to join the costs assessor as a respondent in the judicial review proceeding. That application was heard by P Lyons J who dismissed the application. On 27 August 2010 Mr Mbuzi filed an application for leave to appeal (Appeal No 9275 of 2010) against the decision of P Lyons J. Mr Mbuzi has failed to comply with the Registrar's costs order for the sum of $13,556.50.

[26] It was against this background that Applegarth J then heard the application for security for costs and orders pursuant to r 389A. Applegarth J concluded that the application made to Chesterman JA and the application to join the costs assessor were both vexatious applications, setting out his reasons at [37] and [38]:

> [37] The misconceived application that was made to Chesterman JA was advanced with serious allegations against persons associated with AAMI and the Directors that the applicant failed to justify. Chesterman JA found that the applicant must have known that the facts upon which it was predicated were wrong, and I respectfully agree with that conclusion. The bringing of the application was productive of serious and unjustified trouble and harassment. I find that it was a vexatious application.
>
> [38] I next consider the application to join Mr Bloom, the costs assessor, as a party to these proceedings. It was misconceived. There was no proper basis to join Mr Bloom as a party. The applicant's grievances against Mr Bloom had been agitated, without success, before Alan Wilson J on 10 May 2010. Leaving aside Mr Bloom's broad immunity under s 93LA of the *Supreme Court Act* 1991, his presence as a party was not necessary, desirable, just or convenient to the resolution of the substantive proceeding for judicial review. The application was brought without any reasonable basis. It harassed Mr Bloom, AAMI and the Directors. It was productive of unnecessary costs. It was apt to cause trouble and annoyance to the respondents to that application, without justification. I find that it was a vexatious application."

[27] Applegarth J therefore made an order pursuant to r 389A of the *UCPR* that Mr Mbuzi not file any further application in relation to the judicial review proceeding, including an appeal in relation to the proceeding, without the leave of the court, and in the case of an appeal from the orders made by Applegarth J, without the leave of the Court of Appeal.

[28] Applegarth J then considered the application for security for costs on the basis that Mr Mbuzi had failed to pay the costs ordered by White J which had been assessed, the protracted process by which Mr Mbuzi had contested the assessment of costs, his apparent financial inability to meet the costs that had been assessed and his persistence in misconceived arguments that had been rejected by the court, Applegarth J concluded at [86] that Mr Mbuzi had "adopted a vexatious mode of conducting the litigation" that brought that proceeding within an exception to the rule that a natural person will not be ordered to give security for costs. The Crown Solicitor relies on many of the observations made by Applegarth J in the reasons, including at [79]:

> "[79] The applicant has conducted the litigation in a manner that has generated excessive and unnecessary costs for other parties, and wasted scarce public resources on arguments that are devoid of merit. The affidavits and submissions filed by the applicant contain irrelevant and scandalous assertions. He persists in arguments that have been determined against him. A simple example is the rule 378 argument that

> he argued and lost before Margaret Wilson J on 30 August, 2010 and attempted to re-argue before me the next day."

[29] Applegarth J ordered Mr Mbuzi to provide security for the costs of AAMI in relation to the judicial review proceeding in the sum of $7,500 within 21 days of 22 September 2010. Applegarth J ordered that, if security were not given as required by the order for security for costs, AAMI may apply to dismiss all or part of the proceeding. Applegarth J also ordered Mr Mbuzi to provide security for costs for the prosecution of his application for leave to appeal in Appeal No 5886 of 2010 in the sum of $5,500 within 21 days of 22 September 2010. Mr Mbuzi was also ordered to pay the respondents' costs of the application that was decided by Applegarth J.

[30] Mr Mbuzi did not pay the security for costs ordered in respect of the judicial review proceeding in the sum of $7,500 or the security for costs in the sum of $5,500 for Appeal No 5886 of 2010. On 20 January 2011 AAMI applied pursuant to Applegarth J's order made in the judicial review proceeding that the judicial review proceeding be dismissed and AAMI and the directors also applied for Mr Mbuzi to provide security for costs with respect to his application for leave to appeal in Appeal No 9275 of 2010. On 14 March 2011 Mr Mbuzi made a cross-application for the dismissal of the respondents' application filed on 20 January 2011. On 18 March 2011 Dalton J dismissed Mr Mbuzi's cross-application and he was ordered to pay the respondents' costs on a standard basis. On 28 March 2011 Boddice J dismissed the judicial review proceeding and ordered Mr Mbuzi to pay AAMI's costs of the judicial review proceeding on a standard basis.

[31] On 15 April 2011 Daubney J ordered Mr Mbuzi to provide security for the respondents' costs relating to Appeal No 9275 of 2010 in the sum of $5,500 within 21 days from the date the order was made and that Mr Mbuzi not take any further step in the appeal without the leave of the Court of Appeal. Mr Mbuzi has not paid that security. Mr Mbuzi was also ordered to pay 80% of the costs of the application on a standard basis.

[32] In view of the fact that the decision of Magistrate Hall was final, subject to the judicial review that was permitted by s 19 of the *Small Claims Tribunal Act* 1973, it would be reasonable to proceed on that basis that the dismissal of the judicial review proceeding was the end of the challenge by Mr Mbuzi to the proceeding before Magistrate Hall. In the course of the hearing of this proceeding on 17 November 2011, Mr Mbuzi asserted that his Small Claims Tribunal matter was "live" at the Queensland Civil and Administrative Tribunal (QCAT) as QCAT was deciding whether to send it back to the Magistrates Court or to deal with it. At the conclusion of the hearing I gave the parties directions about the filing of further affidavits to deal with specified matters, including the current state of the proceeding involving Magistrate Hall. Mr Mbuzi filed a further affidavit on 22 November 2011 and Mr Prowse, a lawyer in the office of the Crown Solicitor, filed a further affidavit on 1 December 2011. On 24 March 2011 (in anticipation of the hearing in this Court on 28 March 2011), Mr Mbuzi sent a letter to the Presiding Magistrate at Brisbane Magistrates Court requesting that his Small Claims Tribunal matter be re-opened, so that an argument could be considered that he had not

advanced before Magistrate Hall which was that the written terms of the insurance contract on which Magistrate Hall relied to refuse his claim had not been given to him at the time that he entered into the insurance contract. As the files of the Small Claims Tribunal became records of QCAT, Mr Mbuzi's request to re-open was referred to QCAT. The matter that was therefore before QCAT was Mr Mbuzi's request for re-opening his finalised claim.

UQ appeal

[33] Mr Mbuzi applied to the Court of Appeal for leave to appeal against the orders made by the Chief Justice in the *UQ* judicial review. Fraser JA who gave the leading judgment in the *UQ* appeal found at [22] that Mr Mbuzi had failed to demonstrate any error in the Chief Justice's decision to refuse to extend time to enable Mr Mbuzi to apply for judicial review and the application for leave to appeal should be refused for that reason. Fraser JA then considered the merits of the amended application for judicial review and at [23] agreed with the conclusion of the Chief Justice that the application for judicial review was devoid of merit. The Crown Solicitor relies on the conclusion of Fraser JA at paragraph [51]:

> "Despite the applicant's unrepresented status and the disparity in the parties' resources, the applicant should also be ordered to pay the respondent's costs of the application for leave to appeal. That order is appropriate because the proposed appeal was not reasonably arguable. The application for leave to appeal was frivolous and the applicant also conducted it in a vexatious way, making serious but wholly unsubstantiated allegations of impropriety against counsel and judges."

Hall security for costs appeal

[34] Mr Mbuzi's application for leave to appeal against the orders made by Applegarth J in the *Hall* security for costs application was dismissed by the Court of Appeal on the basis that the proposed appeal had no arguable merit.

Other matters relied on by the Crown Solicitor

[35] Because of financial hardship, Mr Mbuzi has been successful in obtaining fee reduction for the filing fees on many of the applications that he has commenced in this Court.

[36] The Crown Solicitor seeks to hold against Mr Mbuzi the fact that when he seeks to recover a costs order, he claims the prescribed filing fee without allowance for the reduction that he was given when he paid the filing fee. In particular, the Crown Solicitor relies on Mr Mbuzi's claim for costs in the sum of $2,509 including the sum of $615 for the prescribed filing fee in proceeding BS3871 of 2010, when Mr Mbuzi paid the reduced filing fee.

[37] Mr Mbuzi's claim for the prescribed filing fee was transparent. He conveyed to the court that he accepted that if he recovered the total amount of the filing fee by way of a costs order, he was bound to account to the Registrar for the difference between the recovered amount of filing fee and the reduced filing fee paid by him. That is therefore not a matter that is relevant in determining whether an order should be made under the Act.

[38] The Crown Solicitor is also critical of Mr Mbuzi for failing to disclose his ownership of real property when filing an affidavit in support of his application to obtain fee reduction. The relevant form for obtaining fee reduction requires information on cash at hand, bank balances, and household income and expenditure. That accords with s 10A(3) of the *Uniform Civil Procedure (Fees) Regulation* 2009. This matter raised by the Crown Solicitor is also not relevant to the making of an order under the Act.

[39] The Crown Solicitor relies on Mr Mbuzi's failure to pay numerous costs orders made against him as an aspect of the harassment of other parties to his litigation.

Proceeding BS5009 of 2011

[40] Proceeding BS5009 of 2011 was commenced by Mr Mbuzi on 14 June 2011 by filing an originating application against eight named respondents who were employees of Griffith University. The first respondent had made a decision to refer Mr Mbuzi who is a doctoral student to Griffith University's Student Misconduct Committee (the Committee). The application set out 23 paragraphs specifying the relief claimed by Mr Mbuzi including an injunction restraining the respondents who comprised the Committee from hearing the referral in relation to Mr Mbuzi. Various declarations about the conduct that had preceded the referral to the Committee were sought. On the basis that the seventh and eighth respondents had banned Mr Mbuzi for about eight days from using tea/coffee facilities, damages were sought against them for $25,000 for hurt, embarrassment, annoyance, ill-feeling and inconvenience caused to Mr Mbuzi, as well as exemplary damages in the sum of $10,000 for their refusal to apologise when requested to do so. Damages were also claimed in the application against the first and seventh respondents for defamation in the amount of $200,000.

[41] The return date of the application was 15 June 2011. The hearing came before Byrne SJA on 15 June 2011 for an injunction to restrain until 1 August 2011 the conduct of the meeting of the Committee. That application was dismissed with an order for costs against Mr Mbuzi. Mr Mbuzi had argued that he had not had enough time to prepare for the meeting, but Byrne SJA pointed out that was a matter that could be ventilated before the Committee. Mr Mbuzi's other complaint was that the meeting had not been convened in compliance with the requirements of the University policy concerning the conduct of disciplinary proceedings. Byrne SJA held that, if that were the case, it was a matter that will allow any outcome of the meeting to be the subject of challenge after the event. Byrne SJA concluded that the balance of convenience did not favour the relief that was sought.

[42] Mr Mbuzi had filed an affidavit on 14 June 2011 in support of his application. That affidavit had 17 exhibits, one of which was a claim and statement of claim against the seventh and eighth respondents for his damages claim in the aggregate sum of $35,000 from barring him from the tea/coffee/meal rooms to which Mr Mbuzi claimed access by virtue of being a student at the University. On 9 August 2011 Mr Mbuzi applied for judgment in default in the amount of $35,000 against the seventh and eighth respondents in reliance on the statement of claim that had not been filed and served as such, but merely was an exhibit to Mr Mbuzi's affidavit filed on 14 June 2011.

[43] The application for default judgment was heard by Byrne SJA on 11 August 2011. Mr Mbuzi's basis for seeking default judgment was that the seventh and eighth respondents were personally served with copies of the claim and statement of claim (jointly with an application for other relief) on 14 June 2011 and they had not filed and served their defence. Byrne SJA could not locate the claim and statement of claim on the file that was relied on by Mr Mbuzi. Ultimately, Mr Mbuzi asked to withdraw the application and Byrne SJA dismissed the application and reserved the costs of the respondents.

[44] Mr Mbuzi then ascertained from a Registrar that the exhibits to his affidavit filed on 14 June 2011 had not been attached properly to his affidavit and were separated from the affidavit, so that the affidavit (without exhibits) was all that was incorporated into the court file that was before Byrne SJA. A Deputy Registrar sent a letter to Mr Mbuzi on 12 August 2011 explaining what had occurred and that the matter had been rectified by placing the exhibits with the affidavit on the court file.

[45] The claim and statement of claim as exhibits to Mr Mbuzi's affidavit did not give them the status that documents properly filed as such have under the *UCPR*. The fact that they are called claim and statement of claim does not make them documents that have that character under the *UCPR*, if they were not filed or ordered to be treated as documents of that type. Even allowing for the action of the registry staff in separating the exhibits from the affidavit as filed, Mr Mbuzi was never in a position under the *UCPR* to proceed to default judgment against the seventh and eighth respondents or otherwise act on the basis that there was an active claim and statement of claim against them.

[46] On 12 August 2011 Mr Mbuzi filed the claim and statement of claim against the seventh and eighth respondents to commence a new proceeding BS7052 of 2011. On 22 August 2011 in both proceedings BS5009 of 2011 and BS7052 of 2011, Mr Mbuzi filed an application for default judgment against the seventh and eighth respondents again seeking the amount of $35,000. Both applications for default judgment were heard by Boddice J on 23 August 2011. After his application for default judgment had been dismissed on 11 August 2011, Mr Mbuzi had not served the claim and statement of claim on the seventh and eighth respondents after filing them in proceeding BS7052 of 2011. Mr Mbuzi was still relying on the service of those documents as exhibits to his affidavit filed on 14 June 2011.

[47] Mr Bradley of counsel was instructed to appear for all respondents in both proceedings before Boddice J, but Mr Mbuzi disputed his entitlement to appear on the basis they were applications for default judgment. As the applications were misconceived, Mr Bradley did appear and consented to Mr Mbuzi's claim being dismissed in proceeding BS7052 of 2011 with costs of that proceeding to be costs in proceeding BS5009 of 2011. Boddice J ordered that the originating application in proceeding BS5009 of 2011 continue as if started by claim and gave directions for the filing and serving of a statement of claim by 6 September 2011 and the defence by 4 October 2011.

[48] Despite the fact that Boddice J expressly ordered Mr Mbuzi to file and serve a statement of claim by 6 September 2011, Mr Mbuzi did not do so. When Boddice J was hearing the default judgment applications on 23 August 2011, Mr Mbuzi proposed to file another application to persuade Boddice J "to deem the material in that application of 14th of June to be as good as a claim." In the course of argument, Boddice J observed that "If that's what you want … subject to hearing from Mr Bradley, I may well make an order that the proceeding continue as if started by claim but you're not then entitled to judgment because they're entitled to put a defence in to that claim …" Boddice J went on to point out that there was no statement of claim and that Mr Mbuzi would need to have a statement of claim. Mr Mbuzi responded that there was a statement of claim attached to the affidavit filed on 14 June 2011. From this exchange, Mr Mbuzi has deduced that it was not intended by Boddice J that he file a separate statement of claim. His submission on 17 November 2011 was that Boddice J was telling him that he did not need a further claim and statement of claim in respect of the seventh and eighth respondents, and the order he made covered a statement of claim in relation to the other respondents. The fact remains, however, that the order that was ultimately made on 23 August 2011 by Boddice J required a statement of claim to be filed by Mr Mbuzi.

[49] The affidavits and submissions relied on by the Crown Solicitor in support of the application under the Act were filed by 30 September 2011. For the purpose of the hearing on 17 November 2011, it was convenient for the court file in proceeding BS5009 of 2011 to be brought to the courtroom. I am therefore able to refer to documents filed after 30 September 2011 that were on that file.

[50] Mr Mbuzi acted on his interpretation of what was intended by Boddice J by filing another application for default judgment on 11 November 2011 against the seventh and eighth respondents in proceeding BS5009 of 2011 seeking the amount of $35,000. In the same application Mr Mbuzi sought leave to amend the application by striking out the second to the sixth respondents. His application filed in support of his default judgment application exhibited the claim and statement of claim that had been filed in proceeding BS7052 of 2011 against the seventh and eighth respondents. That application came before me on 15 November 2011. By consent of the parties, I ordered the dismissal of Mr Mbuzi's application for default judgment, removed the second to the sixth respondents (now referred to as defendants) as parties to the proceeding and ordered that Mr Mbuzi file and serve a statement of claim on the solicitors for the first, seventh and eighth defendants by 29 November 2011 and that any defence be filed and served on Mr Mbuzi on or before 18 days after service of the statement of claim.

[51] Mr Keane in his written submissions asserted that there was no basis for relief at all in proceeding BS5009 of 2011 and stated that "the matter complained about is not susceptible to judicial review, based on *Griffith University v Tang* (2005) 221 CLR 99 (*Tang*). During the hearing on 17 November 2011 Mr Keane repeated the submission. That was challenged by Mr Mbuzi on the basis that BS5009 of 2001 was not a judicial review application. To the extent that, as at 17 November 2011, Mr Mbuzi was proceeding further against the first, seventh and eighth respondents only, and the claims against the seventh and eighth defendants were damages claims and a claim for damages for defamation had also been made against the first respondent for defamation in the originating application, it is not properly characterised as a judicial review application. Another submission that was made by Mr Keane was that it should be inferred from the nature (and timing) of the claims made in this proceeding that it was "an attempt by Mr Mbuzi to cow, harass or intimidate other faculty members of Griffith University."

Appeal No 7520 of 2011

[52] Mr Mbuzi had not applied for leave to appeal the decision in *Favell v Mbuzi* [2005] QDC 356, until he filed an application for extension of time to appeal and for leave to appeal on 24 August 2011. It is apparent that the reason that Mr Mbuzi endeavoured at a very late stage to appeal against the judgment awarded against him for damages for defamation was that it was that judgment that was the basis of bankruptcy proceedings against Mr Mbuzi. By the time of the hearing on 17 November 2011 a sequestration order had been made against Mr Mbuzi, but his appeal against that decision was heard subsequent to the hearing and was ultimately successful: *Mbuzi v Favell (No 2)* [2012] FCA 311.

[53] While my decision on the application under the Act has been reserved, the Court of Appeal dismissed Mr Mbuzi's application in Appeal No 7520 of 2011: *Mbuzi v Favell* [2012] QCA 17. Fraser JA (with whom the other members of the court agreed) identified as wrong Mr Mbuzi's interpretation of a statement that Mr Favell made in the course of the defamation trial as conveying that Mr Favell would not seek to enforce a judgment for damages. Indemnity costs were ordered against Mr Mbuzi for the reasons given by Fraser JA at p 6:

> "I accept the respondent's submissions that indemnity costs should be ordered for a number of reasons. They are: the applicant's extraordinary delay in applying; his unsustainable attempt to justify the delay by a misreading of the evidence given by the respondent at trial; the fact that he had brought two separate proceedings in relation to the judgment against him before this one, namely, the decision in 2007 which I mentioned when giving my initial reasons, and a case called *Mbuzi v The Attorney-General of Queensland and Favell* [2006] QCA 381; the fact that there was no merit in the application; and, finally, the fact that the applicant used the application as a vehicle to make irrelevant, defamatory allegations against the respondent, including but not limited to those which had resulted in the judgment which should have put the defamatory allegations to rest."

This proceeding

[54] The Crown Solicitor's originating application in this proceeding was filed on 24 August 2011. In paragraph 3(b) of the application, the Crown Solicitor sought a stay of proceeding BS7052 of 2011 that had been dismissed by consent of Mr Mbuzi and the named respondents on the previous day. Because of the order made on 23 August 2011, the Crown Solicitor could never obtain a vexatious proceedings order in respect of proceeding BS7052 of 2011. It was therefore not necessary for Mr Mbuzi to take any action in relation to that part of the originating application, but on 30 August 2011 Mr Mbuzi filed an interlocutory application to strike out the relief sought in paragraph 3(b) of the originating application "for being vexatious, nonsensical, intimidation, retaliation and abuse of process." He also sought directions for the future conduct of the originating application. The matter came before Boddice J on 1 September 2011 who adjourned the hearing of the originating application and Mr Mbuzi's interlocutory application until 27 September 2011 and gave directions for the filing of further material.

[55] On 8 September 2011 the Crown Solicitor filed an amended originating application that deleted the reference in paragraph 3(b) to proceeding BS7052 of 2011 and added the reference to Appeal No 7520 of 2011. I gave further directions on 27 September 2011 and by consent Mr Mbuzi's interlocutory application was dismissed with no order as to costs.

Mr Mbuzi's submissions

[56] Mr Mbuzi relies on the affidavit that he filed on 10 November 2011. He seeks to make technical points about the manner in which the proceeding under the Act has been conducted against him (such as unnecessarily including proceeding BS7052 of 2011 in paragraph 3 of the originating application) and relies on character references and complimentary statements he has recorded from various judicial officers made in court about his capacity as a self-represented litigant. He summarises the cases in which he has had "wins" including against a firm of solicitors for which he exhibits a Magistrates Court judgment in the sum of $4,306. He describes having a "part win" in the matter involving Magistrate Hall and a "part win" in the matter involving the University of Queensland.

[57] In relation to the matter involving Magistrate Hall, Mr Mbuzi describes White J's refusal on 9 July 2009 to summarily dismiss the judicial review application against AAMI as a "win" and relied on that as evidence that he had not brought a "hopeless" judicial review application as it was "upheld" by White J. (That misstates the effect of White J's order and reasons. White J was not prepared at that early stage of the proceeding to dismiss the judicial review application against AAMI on a summary basis. That did not equate with Mr Mbuzi's succeeding on the judicial review application against AAMI.)

[58] In relation to the matter involving the University of Queensland, Mr Mbuzi relies on a number of orders that were made by the court as favourable to him on interlocutory hearings before Applegarth J and Byrne SJA and the dismissal of the

respondents' application for directions by the Chief Justice on 19 May 2010. (Because the Chief Justice disposed of the judicial review application on the basis of the respondents' application for summary dismissal, it was unnecessary for the Chief Justice to give directions on the respondents' application for directions and that is why it was dismissed, so that could not objectively be characterised as a win.)

[59] Mr Mbuzi relies on his compliance with the *UCPR* in the steps he takes in proceedings and the documents that he files.

[60] Mr Mbuzi alleges bad faith on the part of the Crown Solicitor in bringing the application under the Act after Mr Mbuzi had foreshadowed an application to recover costs in proceeding BS3871 of 2010. That submission can be immediately rejected. Under s 5 of the Act, the Crown Solicitor is one of the persons who can, without the leave of the court, bring an application for a vexatious proceedings order. It is in the public interest to bring such an application where there is *prima facie* evidence of a litigant frequently pursuing vexatious proceedings, because of the impact of such proceedings on the courts' resources and the other parties to such proceedings. The volume and detail of the material put together by the Crown Solicitor to discharge the onus he bears on the application has been undertaken in seeking to protect the public interest (including the interests of justice) associated with restricting vexatious proceedings. It is totally out of proportion to the maximum costs of $2,509 that were sought by Mr Mbuzi in proceeding BS3871 of 2010 to suggest that the work undertaken and costs incurred by the Crown Solicitor in this proceeding was to avoid Mr Mbuzi obtaining a costs order in his favour against a client of the Crown Solicitor. In any case, there is only assertion by Mr Mbuzi of bad faith against the Crown Solicitor and not persuasive evidence.

[61] Mr Mbuzi's rationalisation of his approach to his cases is set out in paragraphs 30 to 32 of his affidavit:

> "30. That all the matters in which I have been involved have related to where someone else or an institution initiates the breach of my rights, thus my court actions have been to protect my rights.
> 31. I verily believe that that many other members of the community have their rights routinely violated, but that they feel disempowered, while I regard myself to be empowered.
> 32. That the written testimonies exhibited evidence that that my motivation for resorting to courts is as a result of my strong sense of justice and personal rights."

[62] Mr Mbuzi drew a distinction between the proceedings brought by him to vindicate a breach of his rights and the proceedings brought by vexatious litigants such as those who sued judges when they had immunity from suit.

[63] During the course of the hearing, Mr Mbuzi responded to the application by attacking the Crown Solicitor for the errors that had been made in the submissions against Mr Mbuzi and submitted that it was the Crown Solicitor who was vexatious.

[64] Although Mr Mbuzi's primary submission is that the Crown Solicitor's application should be dismissed with costs, as it was an abuse of process, he put forward alternative arguments to the effect that, if the court were satisfied that the Crown Solicitor had demonstrated that the conditions existed for the making of a vexatious proceedings order, the court should not exercise the discretion to do so or consider an order with limited application, such as preventing him from commencing any fresh proceedings until his current proceedings before the court were completed.

The law

[65] The definition of "vexatious proceeding" in the schedule to the Act is:

> "**vexatious proceeding** includes-
> (a) a proceeding that is an abuse of the process of a court or tribunal; and
> (b) a proceeding instituted to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and
> (c) a proceeding instituted or pursued without reasonable ground; and
> (d) a proceeding conducted in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose."

[66] That definition of what can be a vexatious proceeding is expansive and not prescriptive. That is consistent with the objective of the Act, as expressed in the Explanatory Notes for the *Vexatious Proceedings Bill* 2005 to address the problems created by vexatious litigants:

> "A vexatious litigant is a person who demonstrates particular behaviours in the pursuance of legal actions through the courts. These behaviours include taking legal action without any reasonable grounds, a repetition of arguments which have already been rejected, disregard for the court's practices and rulings, and persistent attempts to abuse the court's processes. The consequences of pursuing such actions include wastage of public resources and the harassment and annoyance of defendants in litigation that lacks a reasonable basis."

[67] In *Re Cameron* [1996] 2 Qd R 218, 220, Fitzgerald P considered what makes legal proceedings vexatious:

> "It is also necessary to decide what makes legal proceedings vexatious. Although there are sometimes statutory indications, the broad test potentially concerns such factors as the legitimacy or otherwise of the motives of the person against whom the order is sought, the existence or lack of reasonable grounds for the claims sought to be made, repetition of similar allegations or arguments to those which have already been rejected, compliance with or disregard of the court's practices, procedures and rulings, persistent attempts to use the court's processes to circumvent its decisions or other abuse of process, the wastage of public resources and funds, and the harassment of those who are the subject of the litigation which lacks reasonable basis … ."

[68] The justification for imposing restrictions under the Act on a vexatious litigant was referred to by White JA in *Hambleton v Labaj* [2011] QCA 17 at [71] (*Labaj*):

> "As Kirby J observed in *Re Skyring* it is a serious thing to keep a person out of the courts and the rule of law requires that, ordinarily, a person should have access to the courts in order to invoke their jurisdiction. But the resources of the court are not limitless and must be deployed responsibly. Those against whom proceedings are commenced which are vexatious at their inception, or which become so by frequent, irrational interlocutory processes, may expect to be protected from the abusive use of the court's processes." (*footnote omitted*)

[69] The term "frequently" is a relative term that must be considered in the context of the relevant litigation: *Jones v Cusack* (1992) 66 ALJR 815, 816. Making a mistake in bringing an application or using a particular means to proceed (such as r 668 of the *UCPR*) where it is not appropriate does not necessarily characterise the litigation as vexatious. Persistence in repeating the mistaken application or inappropriate means of proceeding may result in characterising the litigation as vexatious.

[70] If the conditions for the making of a vexatious proceedings order under the Act are satisfied, the court must consider whether, in all the circumstances, the order should be made in the exercise of the court's discretion. Relevant matters include the serious implications of interfering with a person's right of access to the courts and other powers available to the court to regulate and control its own proceedings: *Attorney-General v Wentworth* (1988) 14 NSWLR 481, 484.

Has Mr Mbuzi frequently instituted or conducted vexatious proceedings?

[71] Mr Mbuzi is not legally qualified, but in recent years has appeared for himself in many court proceedings and it is apparent from many of the documents he has filed and the submissions he has made that he has therefore gained experience from his own litigation and familiarity with court procedures and some aspects of the law. Despite the fact that on occasion judicial officers have made positive comments about Mr Mbuzi's familiarity with the *UCPR*, what is also apparent from his documents and submissions that I have considered in connection with this proceeding is that his knowledge of court procedure and law is superficial. He is focused on the process relating to his claims, rather than the substance of his claims and generally shows no understanding of the consequences for the other parties of the proceedings he brings which are unmeritorious and the oppressive manner in which he conducts them, such as by bringing unnecessary interlocutory applications.

[72] After judgment was given in favour of Mr Favell against Mr Mbuzi in the defamation trial, Mr Mbuzi did not seek leave to appeal within the time allowed for that purpose. Instead, the unmeritorious proceedings that Mr Mbuzi chose to take in lieu of seeking leave to appeal against that judgment were conducted in a way to harass or annoy Mr Favell. These were the misconceived applications under r 668 of the *UCPR* and the leave to appeal against the sealing on the file of Mr Mbuzi's letter and affidavit. Although I have identified a reason for Mr Mbuzi's very late attempt to apply for an extension of time to appeal against the merits of the

judgment entered against him in the defamation trial, that reason did not justify bringing the application for extension where there were no merits in the application. The manner in which he conducted that application which was identified in the Court of Appeal's judgment in *Mbuzi v Favell* [2012] QCA 17 suggests that Mr Mbuzi has continued the pattern of harassment or causing annoyances in the way he conducts himself in relation to his applications against Mr Favell. Because of this conduct and the unmeritorious applications pursued against Mr Favell, I conclude that Mr Mbuzi's proceedings in this Court and the consequent applications for special leave to appeal to the High Court arising from the defamation trial were vexatious proceedings.

[73] In paragraph 6 of his affidavit filed on 22 November 2011, Mr Mbuzi justifies joining the four directors to the judicial review that was the subject of the *Hall* appeal on the basis they were parties to the small claim and had been notified by the Registrar of the Small Claims Tribunal that the claim was dismissed. Those four directors should never have been included as parties by Mr Mbuzi to his small claim against AAMI. That was the fundamental error made by Mr Mbuzi. The directors of AAMI were not appropriate parties to the claim that Mr Mbuzi was pursuing under the insurance policy. It was misconceived for Mr Mbuzi to use his wrong action in the first place to justify pursuing unmeritorious proceedings against the same parties in the Supreme Court. In paragraphs 9 and 11 of the same affidavit, however, Mr Mbuzi asserts that his judicial review application was in relation to the conduct of Magistrate Hall in respect of her decision in favour of AAMI and the four directors and that as no judicial review application could be made against AAMI and the four directors as they were "private entities", the application filed by AAMI and the four directors on 23 June 2009 for the dismissal of the judicial review application was "vexatious and nonsensical." Mr Mbuzi overlooks that he had joined AAMI and the four directors as respondents to the judicial review application and served them. The assertions in paragraphs 9 and 11 of the affidavit are then inconsistent with the view expressed by Mr Mbuzi at paragraph 17 of the same affidavit:

> "17. I verily believe that to claim 'removal' of AAMI directors from the review proceeding does not make either legal sense or common sense in that the order by Ms Hall sought to be reviewed on grounds of apprehended bias and taking into account an irrelevant consideration, was made in favour of AAMI and its directors. Further, that even if the AAMI directors had been 'removed' by Ms Hall, as purported, that decision is still in their favour and the fact that the review challenges the whole of the decision of Ms Hall means that the directors are necessary and interested parties."

[74] It is incomprehensible that Mr Mbuzi's claim under his contents insurance for $2,099 which was the cost of the damaged cooktop resulted in so many applications and proceedings. The fact that Mr Mbuzi was appearing for himself and therefore not incurring the legal costs associated with retaining a lawyer to act in the various applications on his behalf facilitated his bringing so many proceedings. As I read one transcript and decision after another arising out of the small claim made before Magistrate Hall, I concluded that this series of proceedings amounted to a travesty of justice. This set of proceedings (more than any other) shows Mr Mbuzi's complete fixation with court processes out of all proportion to the original claim and

lack of judgment. Mr Mbuzi emphasises his success in the course of the judicial review application which was the subject of the *Hall* appeal of obtaining an adjournment of the application for summary dismissal by AAMI and the four directors before me on 29 June 2009 for short service and the refusal of White J on 9 July 2009 to give AAMI the benefit of summary dismissal as matters that have to be weighed against the other aspects of the judicial review proceeding. This typifies Mr Mbuzi's pre-occupation with the procedure, rather than looking at the objective merits of his course of action. Mr Mbuzi claims to be empowered by his capacity to apply to the courts for vindication of his rights. He has shown no regard, whatsoever, for the rights of other persons whom he brings into his proceedings unnecessarily where he has no legitimate right to protect. He should not use his belief that he is vindicating his rights to infringe the rights of others. It is of concern that in the course of this application under the Act, Mr Mbuzi was still endeavouring to re-argue the propriety of having joined the four directors to the judicial review proceeding that was the subject of the *Hall* appeal.

[75] In finding that the proceedings in this Court and the special leave application to the High Court arising from the small claim before Magistrate Hall were vexatious and oppressive, I echo the comments by Applegarth J in *Mbuzi v Hall* & *Anor* [2010] QSC 359 at [85]:

> "I conclude that the applicant has adopted a vexatious mode of conducting the litigation. This conclusion does not rest on his general lack of success in bringing or resisting interlocutory applications and associated applications for leave to appeal: his only success seemingly being not having the application for judicial review summarily dismissed against AAMI. It rests on the vexatious nature of the applications that he has brought, his advancing arguments that lack a proper foundation, his persistence in unfounded arguments that have been determined against him, his lodging of applications for leave to appeal that have no reasonable prospect of success and the inclusion in affidavits and submissions of scandalous allegations. This course of conduct has delayed the resolution of the judicial review proceeding, and generated substantial costs. It has been harassing and vexatious to the other parties to applications, not to mention their lawyers who have been the subject of many ill-founded accusations of having misled the court."

[76] In relation to the *UQ* judicial review, the fact that Applegarth J and Byrne SJA made directions that allowed the various applications filed in that matter to proceed to a hearing before the Chief Justice did not validate that proceeding. Mr Mbuzi focuses on the technical reason that the Chief Justice dismissed his judicial review application which was that it was out of time, rather than acknowledging the observations expressed by the Chief Justice about the lack of merits of the application and that the proceedings were vexatious. It was an abuse of process and therefore vexatious for Mr Mbuzi to rely on the procedures available for judicial review against the University of Queensland irrespective of the fact that the substance of his claim did not justify using those procedures.

[77] As the *Hornby* appeal and the preceding District Court appeal arose out of the prosecution of Mr Mbuzi for offences, I do not classify them as vexatious. What is of relevance to the Crown Solicitor's application under the Act is the inappropriate resort by Mr Mbuzi to judicial review proceedings in the Supreme Court in respect of a routine decision by the Magistrate to refuse a request for an adjournment by Mr Mbuzi.

[78] Mr Mbuzi's approach to proceeding BS5009 of 2011 is of concern for his use and manipulation of court procedure. In the first place, the timing of the commencement of the proceeding in relation to the scheduled hearing of the Committee the following day is consistent with Mr Mbuzi seeking to intimidate the eight Griffith University employees named as respondents. Was it necessary to sue for damages for defamation when Mr Mbuzi should have been preparing for the misconduct hearing? Second, resort to the Court was unnecessary in relation to the misconduct hearing when there were procedures within the University that governed the conduct of the hearing. Third, it was a misuse of the *UCPR* to bring a default judgment application for judgment for damages when that was not the procedure that applied to a proceeding commenced by originating application. The misuse was compounded by the second default judgment application against the same respondents in reliance on the statement of claim that was merely an exhibit to Mr Mbuzi's affidavit and in relation to proceeding BS7052 of 2011 where the claim and statement of claim had not been served. What this persistent approach suggests was that Mr Mbuzi was keen to obtain a default judgment for the sum of $35,000 in defiance of the *UCPR*, so he could use the judgment in his dealings with the University. That is given support by the approach of Mr Mbuzi to the direction of Boddice J that he file a statement of claim by 6 September 2011. Mr Mbuzi dissected the transcript of the argument before Boddice J to justify his preferred course of not filing a statement of claim and proceeding with a third application for default judgment that was filed on 11 November 2011 in defiance of the directions given by Boddice J.

[79] Proceeding BS5009 of 2011 is vexatious, as it has been used by Mr Mbuzi for his own purposes, has been an abuse of the process of the court, and caused unnecessary court appearances on behalf of the respondents. Even allowing for the fact that Mr Mbuzi did not continue against the second to the sixth respondents from 15 November 2011, his misuse of the *UCPR* in this proceeding had been extreme.

[80] My conclusions as to which of the numerous proceedings brought by Mr Mbuzi are vexatious satisfy the requirement under the Act that such proceedings must have been brought frequently.

Should a declaration be made under the Act?

[81] Even finding that Mr Mbuzi has frequently instituted or conducted vexatious proceedings in Australia is not sufficient to make a vexatious proceedings order, unless I am satisfied that the discretion under s 6(2) of the Act should be exercised in favour of making an order.

[82] It is relevant to the exercise of that discretion that Mr Mbuzi has had some success in his litigation. I have referred in the course of giving these reasons to some of the interlocutory orders that have been of benefit to Mr Mbuzi and the judgment in his favour in the Magistrate's Court against a firm of solicitors. He had some success in proceeding BS3871 of 2010 before Fryberg J which I summarised in *Mbuzi v Murray* [2012] QSC 83 at [4], [7] and [10] when I made the limited costs order in his favour on 5 April 2012. His successes have to be considered, however, with the findings that I have made about the extremely vexatious aspects of numerous other proceedings involving Mr Mbuzi and his approach to litigation where he is obsessed with the procedure, rather than concerned with the substance of his claims.

[83] I have considered Mr Mbuzi's references in relation to the exercise of the discretion. They have been given by people who speak of his honesty and integrity, but they are not familiar with his approach to his litigation which is what is relevant on this application.

[84] The fact that r 389A of the *UCPR* can be used by parties in proceedings brought by Mr Mbuzi is not a reason not to exercise the discretion to make a vexatious proceedings order where the order is otherwise warranted. In the light of the history of vexatious proceedings analysed in these reasons, a party should not have to wait for two vexatious applications in a proceeding before being able to obtain relief from Mr Mbuzi's approach to litigation.

[85] The relief sought by the Crown Solicitor under s 6(2)(b) of the Act is that Mr Mbuzi be prohibited from instituting any proceedings in any Queensland Court. Under the Act, the jurisdiction can be exercised to prohibit a person from instituting proceedings of any kind within the jurisdiction of any court or tribunal in Queensland. As the Crown Solicitor has limited his application to seeking an order in relation to future proceedings in any Queensland Court, it is appropriate that the order made on the application goes no further than the relief that is sought.

[86] Another issue that arises is the form of the orders that are made under the Act. This was considered in *Labaj* where the primary judge had made a general vexatious proceedings order against Mr Labaj on the application of liquidators against whom many of Mr Labaj's proceedings had been commenced. The exercise of the primary judge's discretion in making a general order prohibiting Mr Labaj commencing any proceedings in Queensland without the leave of the court was upheld at [71].

[87] Mr Mbuzi's vexatious proceedings arise out of dealings in a variety of circumstances. The limitation that Mr Mbuzi suggested on the making of a vexatious proceedings order against him that would allow him to complete his current proceedings, before he instituted new proceedings, does not address the problem that has been revealed by Mr Mbuzi's approach to litigation. The making of a vexatious proceedings order in general terms does not prevent Mr Mbuzi from responding to proceedings brought against him or from applying for leave to institute a proceeding under s 11 of the Act where he can show that he has a claim that is not vexatious. My analysis of the proceedings which I have found to be

vexatious for the purpose of this proceeding suggests that the filter that is achieved by s 11 of the Act would be appropriate in Mr Mbuzi's case in the future.

[88] I am also satisfied that there has been such a gross abuse of process by Mr Mbuzi in his conduct of proceeding BS5009 of 2011 that the proceeding should be stayed. If the remaining damages claims in that proceeding against the first, seventh and eighth respondents can be formulated in a properly pleaded statement of claim and shown to have substance by affidavits that set out the proposed evidence to support the claim, then it is open to Mr Mbuzi to apply under s 7 of the Act to vary or set aside the order that stays the proceeding.

[89] I have therefore concluded that the discretion conferred under s 6(2) of the Act should be exercised in favour of making a vexatious proceedings order against Mr Mbuzi in general terms and a further order staying proceeding BS5009 of 2011.

Proceeding BS9129 of 2011

[90] Although entitled an application relating to statement of reasons, Mr Mbuzi's application that commenced proceeding BS9129 of 2011 against Mr Redlich on 10 October 2011 is an application under the *Judicial Review Act* 1991 seeking reasons for the decisions of Mr Redlich and to review what are described in the application as his decisions that Mr Mbuzi is guilty of misconduct and imposition of an official reprimand as punishment.

[91] Mr Redlich had the application in proceeding BS9129 of 2011 adjourned expressly for directions to the day that the Crown Solicitor's application under the Act was to be heard. Mr Bradley of counsel who appeared for Mr Redlich read and filed submissions by leave on 13 October 2011 that set out the position on behalf of Mr Redlich that the proceeding appeared bound to fail on the basis that the decision the subject of the application was not reviewable under the *Judicial Review Act* 1991, because it was not a decision made under an enactment, in reliance on *Tang* at [96] and was vexatious.

[92] At the hearing on 17 November 2011 the Crown Solicitor applied to amend the application under the Act to include proceeding BS9129 of 2001 as one of the proceedings that should be the subject of an order under s 6(2)(a) of the Act. I refused the Crown Solicitor's application for leave to amend the originating application on 17 November 2011, as no prior notice had been given to Mr Mbuzi of the proposed amendment. I reserved my decision on Mr Mbuzi's request that directions be made for the hearing of the application against Mr Redlich. For the purpose of reaching my conclusion on the Crown Solicitor's application for vexatious proceedings orders against Mr Mbuzi, I have not acted on the material that was before me on 17 November 2011 in respect of proceeding BS9129 of 2011. In view of the submissions that were made on behalf of Mr Redlich about the proceeding being vexatious, it is unsatisfactory not to put in place some steps for resolving the issue.

[93] The action taken against Mr Mbuzi at Griffith University before the Committee that triggered proceeding BS5009 of 2011 appears to have concluded in a finding against Mr Mbuzi that was then the subject of an internal appeal to the Misconduct Appeals Committee chaired by Mr Redlich. The hearing took place on 16 August 2011 and the decision of the Committee was affirmed and Mr Mbuzi was issued with a formal reprimand of which he was notified on 9 September 2011. Mr Bradley of counsel filed a further outline of submissions on 17 November 2011 and an affidavit of Mr Fletcher that exhibited the record of the hearing before the Misconduct Appeals Committee and the findings made by that Committee together with a copy of the letter sent to Mr Mbuzi on 9 September 2011. The outline of submissions alerts Mr Mbuzi again to the reliance by Mr Redlich on the decision in *Tang*.

[94] In light of the fundamental difficulty facing Mr Mbuzi in pursuing the application against Mr Redlich of which Mr Mbuzi has been clearly notified, Mr Mbuzi may wish to bring that proceeding to an end. If not, in view of the fact that proceeding BS9129 of 2011 was commenced after the application under the Act was made and the nature of the application, I consider it appropriate to allow the Crown Solicitor to pursue an order under s 6(2)(a) of the Act in respect of proceeding BS9129 of 2011. Under s 6(4) of the Act, the court must not make a vexatious proceedings order without hearing the person or giving the person an opportunity of being heard. For that purpose, I propose to make directions to facilitate the Crown Solicitor to seek a stay of proceeding BS9129 of 2011. As affidavits and submissions have been filed on behalf of Mr Redlich which can be relied on by the Crown Solicitor without the need for duplication, I propose that in the first instance all that the Crown Solicitor do is give notice of the intention to seek the order in relation to proceeding BS9129 of 2011 and identify the affidavits and submissions that are relied on to seek the order.

[95] Because of associations I have with Griffith University that I have disclosed in court in this matter and in other matters in which Mr Mbuzi has appeared before me where Griffith University or its employees have been involved, I will give both parties the opportunity to raise any issue about whether I should determine whether proceeding BS9129 of 2011 should be stayed pursuant to s 6(2)(a) of the Act.

Costs

[96] Although the Crown Solicitor's application seeks an order for costs, no detailed submissions have been made by either party on the issue of costs. It is therefore appropriate to give both parties the opportunity to consider the reasons for judgment, before any submissions are made on the question of costs.

Orders

[97] It follows from the conclusions that I have indicated in my reasons for judgment that the following orders should be made:

1. It is declared that the respondent Josiyas Zifanana Mbuzi is a person who has frequently instituted or conducted vexatious proceedings in Australia within the meaning of s 6 of the *Vexatious Proceedings Act* 2005 (the Act).

2. Pursuant to s 6(2)(b) of the Act, the respondent is prohibited from instituting proceedings in any Queensland Court, apart from an appeal from these orders.

3. Pursuant to s 6(2)(a) of the Act, proceeding BS5009 of 2011 commenced in the Supreme Court of Queensland by the respondent is stayed.

4. The issue of costs of the application is adjourned to a date to be fixed.

5. It is directed that:

   (a) within 7 days of the date of which these reasons are published the applicant may give notice in writing to the respondent whether he seeks an order pursuant to s 6(2)(a) of the Act staying proceeding BS9129 of 2011 (*Mbuzi v Redlich*) and, if so, identify the affidavits and submissions that have been filed in any proceeding that are relied on for seeking the order;

   (b) if such notice is given, within 21 days of the date on which these reasons are published the respondent may file and serve on the applicant any affidavit that he wishes to rely on that are not yet filed in any proceeding and any submissions that he wishes to make on whether proceeding BS9129 of 2011 should be stayed pursuant to s 6(2)(a) of the Act and identifying the affidavits and submissions relied on;

   (c) within 7 days of the service of the respondent's submissions, the applicant may file and serve on the respondent any submissions in response;

   (d) unless either party in the written submissions requests a hearing, or a hearing before a judge other than Mullins J, the issue of whether proceeding BS9129 of 2011 should be stayed pursuant to s 6(2)(a) of the Act will be determined on the papers.

6. Liberty to either party to apply on two days' notice in writing to the other in relation to orders 4 and 5.