SUPREME COURT OF QUEENSLAND

CITATION:	*Mbuzi v Hall & Ors* [2010] QCA 356
PARTIES:	**JOSIYAS ZIFANANA MBUZI** (applicant/applicant) **v** **ELIZABETH HALL** (first respondent/first respondent) **AUSTRALIAN ASSOCIATED MOTOR INSURERS LIMITED** (second respondent/second respondent) **CLIFFORD ROWE CHUTER** (third respondent/not party to the appeal) **CHERREL HIRST** (fourth respondent/not party to the appeal) **MARTIN DOUGLAS EBERLAIN KRIEWALDT** (fifth respondent/not party to the appeal) **CHRISTOPHER SKILTON** (sixth respondent/not party to the appeal)
FILE NO/S:	Appeal No 11378 of 2010 SC No 6243 of 2009
DIVISION:	Court of Appeal
PROCEEDING:	Appeal from Interlocutory Decision
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	14 December 2010
DELIVERED AT:	Brisbane
HEARING DATE:	29 November 2010
JUDGES:	Holmes and Muir and Fraser JJA Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application refused**
CATCHWORDS:	APPEAL AND NEW TRIAL – APPEAL - PRACTICE AND PROCEDURE – QUEENSLAND – WHEN APPEAL LIES – BY LEAVE OF COURT – GENERALLY – where the applicant applied for leave to appeal from interlocutory orders made by the primary judge – where the primary judge ordered pursuant to r 389A *Uniform Civil Procedure Rules* 1999 (Qld) that the applicant not file any further application without leave of the Court, provide security for costs, and pay the costs of the second to sixth respondents' application and amended application – where the primary judge held that the two applications brought by the applicant were vexatious – whether the primary judge erred in exercising the discretion

to make an order pursuant to r 389A – whether the primary judge erred in exercising the discretion to order the applicant to provide security for costs – whether the primary judge erred in ordering the applicant to pay the second to sixth respondents' costs of their application and amended application – whether the applicant should be granted leave to appeal to this Court

APPEAL AND NEW TRIAL – APPEAL - GENERAL PRINCIPLES – RIGHT OF APPEAL – WHEN APPEAL LIES – FOR BIAS IN JUDICIAL PROCEEDINGS – where the applicant contended that the primary judge did not bring an impartial mind to the application – whether a fair-minded lay observer might reasonably apprehend that the primary judge might not bring an impartial mind to the resolution of the application

Judicial Review Act 1991 (Qld), s 49(4)
Supreme Court of Queensland Act 1991 (Qld), s 69, s 93LA
Uniform Civil Procedure Rules 1999 (Qld), r 69, r 69(1)(b), r 378, r 389A, r 467, r 671, r 772

Harpur v Ariadne Australia Ltd [1984] 2 Qd R 523, cited
Mbuzi v Hall & Ors [2010] QCA 23, related
Mbuzi v Hall & Ors [2010] QCA 5, related
Mbuzi v Hall & Anor [2010] QSC 359, related
Mbuzi v Hall & Ors [2009] QCA 405, related

COUNSEL: The applicant appeared on his own behalf
L Byrnes (Sol) for the first respondent
No appearance required for the second to sixth respondents

SOLICITORS: The applicant appeared on his own behalf
Crown Solicitor for the first respondent
Rogers Barnes and Green for the second to sixth respondents

[1] **HOLMES JA:** I agree with the reasons of Fraser JA and with the order he proposes.

[2] **MUIR JA:** I agree that the application for leave to appeal should be refused for the reasons given by Fraser JA.

[3] **FRASER JA:** The applicant has applied for leave to appeal from orders made by Applegarth J on 22 September 2010:

(a) Pursuant to r 389A of the *Uniform Civil Procedure Rules* 1999 (Qld) ("UCPR") the applicant not file any further application in relation to the applicant's application for judicial review, including an appeal in relation to the proceeding, without the Court's leave;

(b) The applicant provide security for the costs of the second respondent ("AAMI") in relation to the application for judicial review in the sum of $7,500, and consequential orders including a stay of the proceeding if the security is not given;

(c) Pursuant to r 772 of UCPR the applicant provide security for costs in relation to his application for leave to appeal and any consequential appeal to this Court in a different matter in the sum of $5,500, with consequential orders including a stay of the applicant's proceeding if the security is not given, unless this Court otherwise orders;

(d) The applicant in the application for judicial review pay AAMI's costs and the costs of AAMI's directors (or former directors) Ms Hirst and Messrs Chuter, Kriewaldt and Skilton of the their application filed 16 July 2010 as amended on 20 July 2010 to be assessed on the standard basis; and that they were not required to pay the costs of and resulting from the amendment made pursuant to r 378 UCPR.

The orders under *Uniform Civil Procedure Rules* 1999 (Qld), r 389A

[4] UCPR r 389A relevantly provides:

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

. . .

(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.

(4) The Supreme Court may also order that the relevant party must not start a similar proceeding in another court against a party to the existing proceeding or against a party to the existing proceeding and any other person without leave of that 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.

(6) A court may at any time vary or revoke an order made by it under this rule.

. . .

(10) In this rule—

> ***application in relation to the existing proceeding*** includes an appeal in relation to the existing proceeding.
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> ***similar proceeding***, in relation to an existing proceeding, means a proceeding in which—
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> (a) the relief claimed is the same or substantially the same as the relief claimed in the existing proceeding; or
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> (b) the relief claimed arises out of, or concerns, the same or substantially the same matters as those alleged in the existing proceeding."

[5] Applegarth J recorded that the applicant did not contest the submission made for AAMI and the directors as to the meaning of the words "frivolous" and "vexatious" in r 389A.[1] In this Court the applicant did not challenge his Honour's conclusion that the essential issue in relation to r 389A was whether the applicant had brought more than one application in relation to the proceeding, "that has been productive of serious and unjustified trouble and harassment".[2] The issues agitated by the applicant concern the history of the litigation and the accuracy of the underlying facts found by Applegarth J.

[6] The "existing proceeding" for the purposes of r 389A(1) was the applicant's application for judicial review of decisions of the first respondent made on 11 June 2009 as a referee of the Small Claims Tribunal. The applicant filed his judicial review application on 12 June 2009. The application named as respondents the Magistrate, AAMI, and four of its directors. On 9 July 2009, White J (as her Honour then was) ordered on the application of the directors that the application against them be dismissed and that the applicant pay their costs of and incidental to the application, excluding the costs of 29 June 2009.

[7] The applicant applied for leave to appeal to this Court. During the hearing of that appeal the Court gave leave for the respondents to address written submissions about legal questions raised by a member of the Court. The respondents made such submissions but they also referred to an attached affidavit by the respondents' solicitor which annexed a copy of the transcript of part of the proceedings in the Small Claims Tribunal. The transcript demonstrated that the Magistrate had made an order removing the directors as parties to the proceedings in the Small Claims Tribunal before making the decisions which the applicant challenged. Accordingly there was no basis for his having joined the directors as respondents to his judicial review application. The applicant lodged a submission in which he objected to the Court receiving that evidence. The Court accepted that the grant of leave for the respondents to make further submissions did not comprehend the admission of the transcript, but held that this evidence should be taken into account.[3] On 24 December 2009 the Court dismissed the applicant's application for leave to appeal against that decision and ordered him to pay costs.

[8] The applicant then brought the first of the two applications which Applegarth J held to be vexatious. On 6 January 2010 the applicant applied for a stay of this Court's

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1 *Mbuzi v Hall & Anor* [2010] QSC 359 at [31]-[32].

2 *Mbuzi v Hall & Anor* [2010] QSC 359 at [34].

3 *Mbuzi v Hall & Ors* [2009] QCA 405 at [29]-[32], [34] per Fryberg J, McMurdo P and McMeekin J in this respect agreeing.

judgment of 24 December 2009 and for other relief. The ground of the application was that when the appeal was heard the applicant did not know that the Court intended to act upon a further submission and the affidavit filed by his opponents after the hearing. That proposition was without substance. In fact the applicant had been given notice of that material and an opportunity to make submissions about it, which he did. His real grievance was that his submissions were not accepted, but he was bound by the Court's decision. Chesterman JA refused the application for a stay for that reason.[4] His Honour observed of the applicant's further argument that the transcript of the order removing the directors as parties in the Small Claims Tribunal was a forgery that it was "a most serious allegation which to be taken seriously would require the most cogent evidence in support of it, and none whatsoever has been supplied." In a subsequent decision[5] Chesterman JA ordered the applicant to pay the respondents' costs on an indemnity basis because there was no power to make the orders sought by the applicant, "the application was based upon a serious misstatement of the relevant facts and a misrepresentation of what occurred during the hearing of the appeal and during the subsequent exchange of written submissions delivered pursuant to the direction of the court", and "the application was misconceived and… predicated upon facts which the applicant must have known were wrong."[6]

[9] Applegarth J referred to those matters and held that the application dismissed by Chesterman JA was vexatious.[7] The applicant did not direct any specific challenge to any aspect of the reasoning of Chesterman JA or Applegarth J on this issue. He pointed out that during the hearing in the Court of Appeal AAMI and the directors failed to provide the transcript of the proceedings in the Small Claims Tribunal. That is correct but it is irrelevant to the present issue. It was taken into account in the appeal when the Court decided to receive the transcript. The applicant also asserted that the provision of the transcript had been "prohibited" by the Court of Appeal, it was filed without permission, and it was accepted without giving the applicant an opportunity to be heard. Those assertions are wrong. There was no error in Applegarth J's conclusion that the application considered by Chesterman JA was a vexatious application.

[10] The second application which Applegarth J held to be vexatious was the applicant's application to join a costs assessor, Mr Bloom, as a party to the application for judicial review. The directors had sought to have the costs ordered by White J on 9 July 2009 assessed. The registrar made the necessary order for the costs to be assessed and appointed Mr Bloom as the costs assessor.[8]

[11] The subsequent history of the proceeding concerning Mr Bloom was summarised by Applegarth J.[9] On 29 January 2010 Mr Bloom forwarded correspondence to the directors' solicitors and to the applicant enclosing his costs assessor's certificate dated 29 January 2010.[10] On the same day he wrote to the registrar referring to his appointment and enclosing his costs certificate. The costs certificate was filed on

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4 *Mbuzi v Hall & Ors* [2010] QCA 5.

5 *Mbuzi v Hall & Ors* [2010] QCA 23 at [2].

6 *Mbuzi v Hall & Ors* [2010] QCA 23 at [3].

7 *Mbuzi v Hall & Anor* [2010] QSC 359 at [9]-[11], [34]-[37].

8 *Mbuzi v Hall & Anor* [2010] QSC 359 at [13].

9 *Mbuzi v Hall & Anor* [2010] QSC 359 at [14]-[19]. References to paragraph numbers in this judgment are taken from the reasons published on the Supreme Court of Queensland Library Website. The judgment in the Indexed Paginated Bundle omitted a paragraph number.

10 Affidavit of Adam Bloom filed 14 May 2010; Further affidavit of Adam Bloom filed 30 June 2010.

1 February 2010.[11] On 26 February 2010 the registrar made an order that the applicant pay the directors' costs in the sum assessed by Mr Bloom, namely $13,556.50. On 9 March 2010 the applicant filed an application seeking orders that the order dated 26 February 2010 be set aside, varied or stayed, and for the registrar to refer the matter to a judge. The application was heard and determined by Alan Wilson J on 10 May 2010. His Honour dismissed the application with costs to be assessed on the standard basis. On 7 June 2010 the applicant filed a notice of appeal and application for leave to appeal against the whole of the judgment of Alan Wilson J. On 24 June 2010 the applicant filed an application to join Mr Bloom as a respondent in the judicial review proceedings and for other relief relating to the appointment of Mr Bloom as a cost assessor, his costs assessor's certificate and other matters. The applicant's affidavit in support of that application asserted that Mr Bloom lacked impartiality and had written to the court's registry "making claims which I reasonably believe to be deceptive, misleading and false, for which I suspect is an attempt to cover-up his breaches of court rules."[12] The affidavit did not provide any factual foundation for those assertions. The applicant's asserted suspicion and asserted belief that Mr Bloom acted as alleged were no substitute for evidence.

[12] After referring to those matters and Mr Bloom's immunity under s 93LA of the *Supreme Court of Queensland Act* 1991 (Qld), the primary judge referred to the fact that the application to join Mr Bloom had been heard and decided adversely to the applicant by P Lyons J on 30 July 2010. P Lyons J had considered UCPR r 69, referred to the application for judicial review of the decision of the Small Claims Tribunal, and concluded that there was "no reason whatsoever to think that Mr Bloom's presence is necessary or desirable, just and convenient in relation to matters associated with that dispute." Applegarth J held that the application to join Mr Bloom as a party to the applicant's judicial review application was misconceived and that there was no proper basis for it for the following reasons:[13]

> "…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,[14] 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."

[13] The applicant argued that it was appropriate to join Mr Bloom as a party to the applicant's judicial review proceeding because the applicant's dispute with Mr Bloom was connected with that proceeding, but he did not refer to anything to justify that plainly inappropriate test. The test is set out in UCPR r 69(1)(b), which had been drawn to the applicant's attention. It was accurately summarised by P Lyons J and again by Applegarth J.[15] The applicant also did not point to any

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11 Cost Assessor's Certificate signed and dated 29 January 2010.

12 *Mbuzi v Hall & Anor* [2010] QSC 359 at [17].

13 *Mbuzi v Hall & Anor* [2010] QSC 359 at [38].

14 As the immunity was not taken into account by his Honour it is unnecessary to discuss the applicant's argument that the immunity was not relevant to the application to join Mr Bloom.

15 *Mbuzi v Hall & Anor* [2010] QSC 359 at [19]-[20].

advantage he might gain in having Mr Bloom as a party to a judicial review application. As Applegarth J held, the joinder application was apt to cause trouble and annoyance to the respondents to it without justification. There was no error in Applegarth J's conclusion that it was a vexatious application.

[14] Applegarth J correctly held that the precondition for r 389A to apply had been established. His Honour exercised the discretion to make an order under that rule because the applicant did not identify any pending application in the proceeding which he intended to file that would be effected by a leave requirement, he did not submit that the order would unreasonably frustrate his ability to bring a further application, and such an order was appropriate to ensure that the real issues in the judicial review were determined without excessive delay and without the incurring of unnecessary costs on interlocutory applications that lacked substantial merit.[16] The applicant argued that it was inappropriate to restrict him in his attempt to challenge Mr Bloom's assessment of costs, but if he otherwise has any such entitlement and there is arguable merit in such a challenge then he need only seek leave to bring the challenge. The requirement that he first obtain the leave of the Court before he brings any such challenge was entirely justified by the circumstances identified by Applegarth J.

[15] The applicant argued that counsel for AAMI and the directors had conceded that the applicant's proceedings were not vexatious. This argument was inconsistent with the transcript to which the applicant referred,[17] which demonstrates that there was no such concession. The transcript records counsel's submission that it was not necessary to find statements by judges in the reasons for earlier decisions that the proceeding was utterly hopeless, pointless, vexatious or something like that. Applegarth J correctly proceeded on that basis, analysed the circumstances of the applicant's earlier applications, and decided that they were vexatious. The applicant referred also to a statement by Applegarth J in the course of argument that[18] "the fact that someone continues to assert the decisions made were wrong" was not unusual behaviour and that many litigants "continue to contend that the decision is wrong, even though objectively speaking the decision might be quite correct". That observation did not convey approval of the applicant's conduct in relitigating the same issues.

[16] The applicant argued that no order should have been made pursuant to r 389A because the order was sought by an amendment made to the interlocutory application contrary to r 378 of UCPR. On 16 July 2010 AAMI and the directors filed an interlocutory application seeking only the orders for security for costs and consequential orders. On 20 July 2010 they filed an amended application which added the application for an order pursuant to r 389A. The applicant argued that the amendment was ineffective because r 378 only allows amendments before "the filing of the request for trial date." The argument was misconceived. The application by AAMI and the directors was an interlocutory application in respect of which there could be no "request for trial date" of the kind which UCPR r 467 requires for trials. The applicant had advanced the same argument before Margaret Wilson J on 30 August 2010. Her Honour rejected the argument, explained why it was untenable, and ruled that the amendment was properly

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16 *Mbuzi v Hall & Anor* [2010] QSC 359 at [39]-[42].

17 Transcript 31 August 2010, before Applegarth J at 1-19 to 1-20.

18 Transcript 31 August 2010, before Applegarth J at 1-56.

made.[19] Following that ruling the amended application was heard by Applegarth J on the following day. The applicant did not seek an adjournment and he argued the substance of the amended application. Yet the applicant denied that Margaret Wilson J had ruled that the amendment was properly made.[20] Applegarth J ordered a transcript of the hearing before Margaret Wilson J, which established the falsity of the applicant's denial. Nevertheless the applicant asserted in this Court that in fact Margaret Wilson J had responded to his argument by telling him that he might well be right. That assertion is contradicted by the passage of transcript to which the applicant referred.[21]

Security for costs

[17] UCPR r 671 sets out circumstances in which the court may order a plaintiff to give security of costs, relevantly including (in paragraph (h)) "where the justice of the case requires the making of the order". Applegarth J noted that the question whether the applicant was "a plaintiff" (a term defined in inclusive terms in Schedule 4 to the UCPR) was not argued before him, but the applicant argued in this Court that he was not "a plaintiff". It not necessary to discuss that argument since, as Applegarth J held,[22] the Court retains its inherent jurisdiction to make orders for security for costs. The applicant did not argue that there was any error in Applegarth J's analysis of the principles which are relevant in an application for security for costs against an individual in a case such as this.[23]

[18] In the course of a careful analysis of the history of the litigation Applegarth J referred to the following examples of the applicant's vexatious conduct:

(a) The applicant's application on 6 January 2010 seeking a stay of the judgment of the Court of Appeal and other relief, and his application to join Mr Bloom as a respondent in the judicial review proceedings and for other relief filed on 24 June 2010.[24]

(b) The applicant's persistence in arguments that had been determined against him, including his r 378 argument that he argued and lost before Margaret Wilson J on 30 August 2010 and sought to reargue before Applegarth J on the very next day.[25]

(c) The applicant's argument before Applegarth J that the directors were still respondents to the judicial review proceedings, even though the Court of Appeal did not vary the order made by White J dismissing the application for judicial review against them, and even though the directors had been removed as parties before the Small Claims Tribunal.[26]

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19 Transcript 30 August 2010, before Margaret Wilson J at 1-11, 1-24 to 1-25.

20 Transcript 31 August 2010, before Applegarth J at 1-7; *Mbuzi v Hall & Anor* [2010] QSC 359 at [47]-[48].

21 Transcript 30 August 2010, before Margaret Wilson J at 1-16.

22 *Mbuzi v Hall & Anor* [2010] QSC 359 at [54], citing *Maggbury Pty Ltd v Hafele Australia Pty Ltd* [2001] 2 Qd R 187 at 190, paragraph [12]; *Rajski v Computer Manufacture & Design P/L* [1982] 2 NSWLR 443; *Green (as liquidator of Arimco Mining Pty Ltd) v CGU Insurance Ltd* [2008] NSWCA 148.

23 *Mbuzi v Hall & Anor* [2010] QSC 359 at [57]-[70].

24 *Mbuzi v Hall & Anor* [2010] QSC 359 at [78].

25 *Mbuzi v Hall & Anor* [2010] QSC 359 at [79].

26 *Mbuzi v Hall & Anor* [2010] QSC 359 at [80].

(d) The applicant's false accusations that counsel and solicitors for AAMI and the directors had misled courts by asserting that the directors had been removed as parties.[27]

(e) The applicant's persistence in arguing that the costs assessor failed to file the costs certificate although the Court's record showed, consistently with the only evidence on the point, that the certificate was filed on 1 February 2010.[28]

[19] Applegarth J summarised the reasons why orders for security for costs were appropriate in the following passage:[29]

> "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.
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> My conclusion that the applicant has adopted a vexatious mode of conducting the litigation brings this case within an exception to the basic rule that a natural person who sues will not be ordered to give security for costs.
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> The other parties have expended substantial costs in defending vexatious applications or in bringing applications to protect themselves from further vexation. The costs incurred by them may not be recovered. The likelihood is that they will not be. Resources that might have been devoted to defending a relatively simple judicial review application that focused on two aspects of the first respondent's conduct of a small claims proceeding have been spent on applications in this court and applications for leave to appeal from decisions that went against the applicant.
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> The risk that the applicant might not be able to pay a cost order that was made against him at the conclusion of the judicial review proceeding was a risk that AAMI was required by the law to accept

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27 *Mbuzi v Hall & Anor* [2010] QSC 359 at [81]-[83].

28 *Mbuzi v Hall & Anor* [2010] QSC 359 at [84].

29 *Mbuzi v Hall & Anor* [2010] QSC 359 at [85], [86], [88],[89].

> so that the applicant might have his day in court. But the applicant has had many days in court in these proceedings, without advancing the matter to a hearing of the substantive application. The principle of access to justice does not require AAMI to bear the costs of those many days in court. The applicant's vexatious conduct of the proceedings has required AAMI to expend resources that it should not have been required to incur. The costs orders made in its favour are unpaid."

[20] The applicant argued that security should have been refused because the respondents delayed in applying for security until more than a year after the applicant commenced his application for judicial review. This argument was based on the false premise that the application for security for costs should have been made promptly after the commencement of the judicial review application. The application became appropriate only after the applicant had conducted his litigation in such a manner as to justify an order for security for costs against an individual. There was no unreasonable delay after it became apparent that such an order was justified. It is therefore not necessary to consider the significance of delay in this context.

[21] The applicant argued that the primary judge was in error in thinking that the applicant had not made AAMI a party to his original proceeding before the Small Claims Tribunal. He referred to Applegarth J's remark in the course of argument[30] that the Magistrate was the first respondent, and "at some stage or another AAMI, and perhaps others, were joined". That remark did not convey any conclusion that AAMI was not originally joined, it had no bearing on any issue considered by Applegarth J, and it did not form any part of his Honour's reasons for making the orders which the applicant challenged in this application.

[22] The applicant referred the Court to material he had filed in which he had asserted that various lawyers and judges had been guilty of serious improprieties in various respects. The allegations the applicant made against the lawyers for AAMI and the directors of misleading courts were accurately described by Applegarth J as "unfair and inaccurate" in the passage already quoted and as "ill-founded accusations".[31] Applegarth J also correctly held that there was no reasonable foundation in a statement by the applicant to the effect that a solicitor had falsely sworn an affidavit on 6 May 2010 that Mr Bloom had assessed costs in the sum of $13,556.50 and filed his certificate with the Court on 1 February 2010. In fact the affidavit merely exhibited correspondence about the costs assessment and the only evidence was to the effect that Mr Bloom caused his certificate to be filed and it was filed on 1 February 2010. In the course of oral argument in this Court the applicant referred to and sought to justify different allegations of impropriety he had made against other lawyers and judges in relation to litigation unconnected with his judicial review application. He did not identify any evidentiary support for any of those allegations but in any case those matters are not relevant. Applegarth J did not rely upon those different allegations of impropriety as justification for orders under r 389A. After concluding that the orders were appropriate, his Honour noted that he had not delayed delivery of his decision by addressing the applicant's personal

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30 Transcript 31 August 2010, before Applegarth J at 1-31.

31 *Mbuzi v Hall & Anor* [2010] QSC 359 at [85].

attacks.[32] Nor did his Honour rely upon those allegations in concluding that it was appropriate to order security for costs. They are not mentioned in his Honour's reasons on that topic.[33] Applegarth J did refer to "the inclusion in affidavits and submissions of scandalous allegations",[34] but the context suggests that this was a reference to the applicant's allegations against the lawyers who represented AAMI and the directors, which were found to be false and made without any evidentiary foundation.

[23] The applicant relied upon *Harpur v Ariadne Australia Ltd*[35] for the proposition that as a general rule no order for costs should be made in relation to an individual litigant. Applegarth J accepted that proposition.[36] The description of the rule as a general rule implies the existence of exceptions. The applicant did not challenge Applegarth J's analysis of those exceptions and the circumstances in which it is appropriate to exercise the discretion to order security for costs against an individual. My own view is that this was a clear case for the exercise of the discretion.

Bias

[24] The applicant argued that the primary judge did not bring an impartial mind to his application. In support of this contention the applicant referred to his Honour's statement in the course of argument that "you should be very careful, Mr Mbuzi, particularly when the media is present, of asserting things that have an unstated assumption".[37] The context was that the applicant had just stated that "I never brought a judicial review application against directors",[38] that he had "every legal basis" to join the directors in his judicial review application, that he still had it, and that was why they were still respondents,[39] that the directors' lawyers had engaged in misleading conduct, and that it was contrary to legal requirements and judicial norms that at an unrelated hearing on another day a different judge had not disclosed that the Chairman of AAMI was the Chancellor of the University of Queensland and that the judge was a Deputy Chancellor of the University.[40] Applegarth J referred to the possibility that the judge may have not known that the individual was a director of AAMI before making the remark criticised by the applicant. The remark was unexceptionable.

[25] The applicant also argued for bias with reference to statements in his affidavit filed on 26 November 2010 that in a subsequent proceeding (the transcript of which was not in the record) the applicant asked Applegarth J how his Honour came to have contact with "Andy" (the applicant described the person only by his first name). The applicant deposed that "Andy" worked for a media organisation and had spoken to and interviewed the applicant. The applicant deposed that Applegarth J

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32 See *Mbuzi v Hall & Anor* [2010] QSC 359 at [44].

33 *Mbuzi v Hall & Anor* [2010] QSC 359 at [71]-[102].

34 *Mbuzi v Hall & Anor* [2010] QSC 359 at [85].

35 [1984] 2 Qd R 523 at 530 per Connolly J.

36 *Mbuzi v Hall & Anor* [2010] QSC 359 at [58].

37 Transcript 31 August 2010, before Applegarth J at 1-32.

38 Transcript 31 August 2010, before Applegarth J at 1-30. Although the applicant sought no specific orders against the directors his application for judicial review named each of them as respondents and challenged the decision of the Magistrate who constituted the Small Claims Tribunal not to disqualify herself and her decision to refuse an adjournment, on grounds including that the Magistrate's conduct "unfairly favoured the respondents".

39 Transcript 31 August 2010, before Applegarth J at 1-31.

40 Transcript 31 August 2010, before Applegarth J at 1-32.

responded that he had seen the person reading television news. (That alleged answer contradicted the assumption in the alleged question that his Honour had "contact" with the media employee.) The applicant deposed that the employee had said that he was a "field news producer". On the strength of those matters, the applicant expressed an opinion that the employee could not have been seen by the judge reading television news,[41] and he argued that Applegarth J was biased. It is necessary only to recite the argument to demonstrate its illogicality and the absence of relevant evidentiary support.

[26] In another argument the applicant contended that his allegations of bias should be accepted because the judge had failed to dispute them after he had made the allegations in his outline of argument in this appeal. The argument ignored the fundamental consideration that the judge's function in relation to the merits of the respondents' interlocutory application ended upon delivery of judgment and also the convention that judges generally do not respond to allegations by disappointed litigants. In any case a failure to respond to an unsustainable argument does not make the argument a good one.

[27] The applicant alleged that the Chief Justice knew the directors, or one or more of them, and sent an email to the solicitor acting for the directors. The applicant did not adduce any admissible evidence upon this topic. He merely exhibited to his affidavit a purported email from someone else. That email included a statement that an email which included the applicant's last name had been sent to the directors' solicitor's email address from a different email address which (I will assume, in the absence of proof) was an email address used by the Chief Justice. The applicant did not adduce any evidence of the content of the email. The applicant stated from the bar table that the Chief Justice disqualified himself from hearing any matter connected with this litigation. Nevertheless, the applicant argued that the purported email evidenced impropriety by the Chief Justice. That argument was illogical and was made without any evidentiary basis. The applicant's further argument, that the same evidence established impropriety by Applegarth J, was similarly baseless.

Irrelevant matters

[28] The applicant referred to what he alleged were statements made by some judges which suggested that the directors were proper parties to his judicial review application. The statements the applicant relied upon were made in circumstances in which the applicant had named the directors as respondents even though they had been removed as parties in the proceedings in the Small Claims Tribunal and before that critical information was communicated to the court. They are in any case irrelevant to the question of the correctness of the orders challenged in this application. The applicant's written and oral submissions included insulting remarks about some judges and praise for others. Neither category of remarks is relevant to any issue in this application. I have similarly disregarded the applicant's complaints to statutory bodies and others, which have no bearing upon any matter this Court must decide in this application.

Costs

[29] Applegarth J ordered the applicant to pay AAMI's and directors' costs of and incidental to their interlocutory application filed on 16 July 2010, as amended on

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41 Affidavit of the applicant filed 26 November 2010 at paragraphs 4 and 5.

20 July 2010 to be assessed on the standard basis and that they were not required to pay the costs of and resulting from the amendment made pursuant to r 378.[42] His Honour had foreshadowed those orders in the reasons, having observed that costs should follow the event.[43]

[30] Contrary to one of the applicant's arguments, the power to order costs was not circumscribed by any success the applicant may have had in other interlocutory applications.[44]

[31] The applicant contended that he should not have been ordered to pay costs because of the great disparity between his financial resources and those of AAMI and the directors. The respondents' application before Applegarth J was amply justified and the applicant had no meritorious argument in opposition to the orders sought. His arguments were mainly comprised of misconceived technical points, misstatements about the history of the litigation, and unfounded allegations of impropriety by a variety of lawyers and judges. The costs order made by Applegarth J was an appropriate exercise of discretion regardless of the disparity in financial resources relied upon by the applicant.

Disposition and orders

[32] The applicant did not contend that he had a right of appeal. His application for leave to appeal should be refused on the ground that the proposed appeal has no arguable merit. It is therefore unnecessary to consider the relationship between the power conferred by r 389A of UCPR to order that a party may not appeal without leave and the right of appeal to this Court created by s 69 of the *Supreme Court of Queensland Act* 1991 (Qld).

[33] The respondents did not ask for costs of the application in this Court.

[34] The application for leave to appeal should be refused.

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42 *Mbuzi v Hall & Anor* [2010] QSC 359 at [110], see orders 11 and 12.

43 *Mbuzi v Hall & Anor* [2010] QSC 359 at [109].

44 See *Judicial Review Act* 1991 (Qld), s 49(4).