

**IN THE DISTRICT COURT  
AT TAURANGA**

**CIV-2016-070-000134  
CIV-2015-070-000164  
[2016] NZDC 8889**

BETWEEN

LISA MIRIAM TUNUI  
Appellant

AND

FIRST NATIONAL REAL ESTATE -  
KAIMAI REAL ESTATE LIMITED  
Respondent

Hearing: On the Papers

Judgment: 23 May 2016

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**JUDGMENT OF JUDGE R L B SPEAR  
[Appeal against Tenancy Tribunal Decision]**

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[1] The Registrar has referred this appeal file to me for consideration given its unfortunate history.

[2] Following a hearing before a Tenancy Tribunal Adjudicator on 6 March 2015, the Tribunal resolved the application before it against Ms Tunui and granted First National Real Estate – Kaimai Real Estate Ltd possession of the premises at 84 Kaiwha Road, RD 5, Tauranga, ordering Ms Tunui to also pay \$250 in exemplary damages for unlawful entry of the premises.

[3] The reasons for that decision were given on 9 March 2015 in a relatively comprehensive and detailed manner.

[4] Ms Tunui appealed that decision to this Court and also applied for a stay of proceedings. The application for stay was heard by Judge Rollo on 11 March 2015.

In a decision given by Judge Rollo that day, the application for stay was refused with the Judge noting, in particular, that the Notice of Appeal did not identify any basis on which it could be considered that the appeal would have any prospect of success. Furthermore:

*Given what appears to be a strong and reasoned decision from the Tenancy Tribunal, and an absence of any compelling grounds to challenge that decision, I am not satisfied this is an appropriate case for a stay of proceedings.*

[5] The appeal was then set down for hearing on 4 June 2015. Around that time, Mr McArthur became involved for Ms Tunui, at least on a preliminary basis and while awaiting the outcome of a legal aid application.

[6] The appeal hearing for 4 June 2015 was adjourned through to 13 August 2015, then to 23 November 2015, and then to 13 January 2016 for hearing.

[7] The appeal came on for hearing on 13 January 2016 before Judge Ingram. The appellant Ms Tunui did not appear in person but was represented by Mr McArthur who sought and was granted leave to withdraw. The case was then adjourned further to 11 February 2016 for hearing.

[8] On 11 February 2016 the case was called but there was no appearance either by or on behalf of the appellant, Ms Tunui. Judge Wolff then struck the appeal out.

[9] Ms Tunui then filed a new Notice of Appeal on 17 November 2015; over nine months after the first appeal was struck out. The grounds stated in this new Notice of Appeal are:

*Based on the decision I would like a re-appeal that given the email (attached to the notice) that was not put before me until after the adjournment I was never given a chance to witness or refute the allegations and ask for a reasonable chance to speak and dispute the email and its contents. Due to the timeframe my lawyer Gerald McArthur would like to apologise and ask that I be given a chance of extension as he has been under a lot of other cases and request a waivo (sic) of the fee for this particular application as I have a maybe subject to miscarriage of justice due to inconclusive evidence.*

[10] The email annexed to that Notice of Appeal does not appear to relate at all to the issues before the Tenancy Tribunal Adjudicator.

[11] I consider without doubt that this attempt to appeal again the decision of the Tenancy Tribunal, given that the first appeal was struck out for non-attendance and thus a failure to prosecute, amounts to an abuse of process. There was nothing in the main file to suggest that Ms Tunui was under any difficulty in respect of the presentation of her appeal at the hearing finally set for 11 February 2016. Judge Wolff, in the decision given by him on that date, noted that there was no appearance by or for the appellant, Ms Tunui and acknowledged that Mr McArthur had withdrawn. Furthermore:

The decision given by the Tenancy Tribunal was one that has, in practical terms, brought an end to matters and the appeal therefore is regarded as abandoned and is struck out.

[12] In all those circumstances, to attempt to bring another appeal is simply an attempt to get around the striking out of the first appeal. [But] in any event, it raises no issues that could be considered appealable in respect of the Tribunal's decision.

[13] This appeal is struck out as an abuse of process.