

CITATION:	<i>Harris v Rowland & Anor</i> [2024] NTSC 97
PARTIES:	HARRIS, Thomas Kiernan v ROWLAND, James Maxwell and ROWLAND, Elizabeth Gloria
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT exercising Territory jurisdiction
FILE NO:	2024-02998-SC
DELIVERED:	22 November 2024
HEARING DATE:	On the papers
JUDGMENT OF:	Kelly J

Northern Territory Civil and Administrative Tribunal Act 2014 (NT), s 141
Supreme Court Rules 1987 (NT), r 82.04, r 82.16, sub-rule 82.16(2), r 82.25

Department of Premier and Cabinet v Hulls [1999] VSCA 117; *Niemann v. Electronic Industries Ltd* [1978] VicRp 44, referred to.

REPRESENTATION:

Counsel:

Applicant:	Self represented
First and Second Respondents:	Self represented

Solicitors:

Applicant:	Self represented
First and Second Respondents:	Self represented

Judgment category classification:	C
Judgment ID Number:	Kel2410
Number of pages:	10

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Harris v Rowland & Anor [2024] NTSC 97
2024-02998-SC

BETWEEN:

THOMAS KIERNAN HARRIS
Applicant

AND:

JAMES MAXWELL ROWLAND
First Respondent

AND:

ELIZABETH GLORIA ROWLAND
Second Respondent

CORAM: KELLY J

REASONS FOR JUDGMENT

(Delivered 22 November 2024)

- [1] The applicant apparently seeks leave to appeal from two decisions of the Northern Territory Civil and Administrative Tribunal (“NTCAT”), a decision delivered on 8 August 2022 in case no 2022-01358–CT ordering the applicant to pay to the respondents the sum of \$12,861.70 by close of business on 5 September 2022, and a decision on 24 August 2023 refusing an extension of time for the applicant to apply to NTCAT to reopen the original proceeding.

- [2] The proceeding before NTCAT was an application by the respondents to this application for damages for breach of a construction contract. The applicant (the respondent to the NTCAT proceeding) was served with the originating process by registered post at the registered address for service of his business. He did not appear and on 8 August 2022, NTCAT gave judgment against him in default of appearance ordering him to pay the respondents (the applicants to the NTCAT proceeding) \$12,861.70 by close of business on 5 September 2022.
- [3] The applicant was advised of the judgment by email on 8 August 2022; the judgment was later registered in the Local Court and enforcement proceedings commenced. Almost a year later, on 2 August 2023, the applicant applied to NTCAT to reopen the proceeding under s 80 of the Act.¹
- [4] On 24 August 2023, NTCAT refused the applicant’s application for an extension of time and dismissed the application to reopen the proceeding. In published reasons for that decision, Mr Andrew Macrides stated at [12]:

The Tribunal has general power under section 68 of the Act and rule 13 of the NTCAT Rules to grant relief from time limits. Rule 15(3) provides that “[t]he time specified in subrule (2) may be extended under rule 13 only in exceptional circumstances”.

He reviewed the authorities on “exceptional circumstances”; recited the applicant’s evidence and contentions, including the applicant’s contention

¹ Under s 80(4) of the Act NTCAT has the discretion to reopen a proceeding in circumstances where a party who failed to appear at a hearing has a reasonable excuse for that failure.

that the applicant had family commitments, was having financial difficulties, was “run down” and at his “wits end”. He said:

The nature and extent of his business activities are matters entirely within his control. I do not accept that the applicants should bear the consequences of the decisions he made in regards to how he manages his business (eg not having arrangements in place to manage business related “paperwork”).

and concluded:

Further his failure to take any action when he finally received the orders and reasons on August 2022 amounted to ‘head in the sand’ approach to the proceeding.

He had an opportunity at that stage to file for an application for reopening within the relevant 28 day period. He did not.

The respondent must bear the consequences of his actions.

- [5] Under s 141 of the *Northern Territory Civil and Administrative Tribunal Act 2014*, (“the Act”) a party to a proceeding in NTCAT may appeal to the Supreme Court against a decision of the Tribunal on a question of law, only with the leave of the Supreme Court.
- [6] Under the *Supreme Court Rules 1987* (NT), an application for leave to appeal must be filed within 28 days of the decision appealed from.² The application for leave to appeal against the decision of 8 August 2022 should have been filed by 5 September 2022. The application for leave to appeal against the decision of 24 August 2023 should have been filed by 21 September 2023.

2 *Supreme Court Rules* 82.04 and 82.25

- [7] Under Rule 82.16, an application for an extension of time within which to appeal (or to seek leave to appeal) must be accompanied by the following:
- (a) the proposed notice of appeal;
 - (b) written submissions in support of the application; and
 - (c) an affidavit deposing any fact relied on in support of the application.
- [8] The applicant has filed an application seeking leave to appeal against “the judgment of Tribunal Administrator Andrew Macrides given on 24 August 2023 at the Northern Territory Civil and Administrative Tribunal (NTCAT)”. The application annexes a proposed notice of appeal (Annexure A), written submissions in support of the application (Annexure B) and “an affidavit deposing to any fact relied on in support of the application” (Annexure C).
- [9] Although the application for leave to appeal states that leave is sought to appeal against the decision of 24 August 2023, the proposed notice of appeal purports to be an appeal against both NTCAT decisions, the decision of 8 August 2022 and the decision of 24 August 2023.
- [10] On the same date, the applicant also filed an application seeking “an extension of time to file a notice of appeal against the decision of the Northern Territory Civil and Administrative Tribunal (NTCAT) in case number 2022-01358-CT, delivered on August 2022, and the subsequent order refusing the extension of time on 24 August 2023.” (This should have been an application for an extension of time to apply for leave to appeal.)

- [11] The application for an extension of time also annexes a proposed notice of appeal (Annexure A), written submissions in support of the application (Annexure B) and “an affidavit deposing to any fact relied on in support of the application” (Annexure C). The proposed notice of appeal and the affidavit are in essentially the same terms as the notice of appeal and affidavit annexed to the application for leave to appeal but the written submissions are different.
- [12] Under sub-rule 82.16(2), the written submissions in support of an application for leave to appeal or an application for an extension of time within which to apply for leave to appeal must concisely set out the following:
- (a) the nature of the case;
 - (b) the questions involved;
 - (c) in the case of an extension of time – the reasons for the delay in giving notice of appeal or applying for leave to appeal;
 - (d) the reasons why the leave or extension should be given.
- [13] In the written submissions annexed to the application for leave to appeal, the applicant states, “The applicant appeals the decision on the grounds of procedural fairness, errors of law, and a failure to account for extenuating circumstances related to the COVID-19 pandemic, which significantly impacted the applicant’s ability to engage with the proceedings.”
- [14] In relation to the proposed appeal ground relating to procedural fairness, the applicant complains (in relation to the decision of 8 August 2022):

The Tribunal proceeded with the hearing on 8 August 2022 without the appearance of the respondent (myself) as I did not receive proper notice of the proceedings. The Tribunal found that I was duly served via registered post; however, the notice was sent to an outdated address despite my contact details being available. I wasn't in town at the time the registered post said it was delivered.

As a result I was deprived of the opportunity to present my case, which constitutes a breach of the principles of natural justice.

[15] If made out, that would constitute an error of law which would be appellable under s 141 of the Act. However, the affidavit which deposes to “any fact relied on in support of the application” does not set out any relevant facts (for example in relation to the change of address and how it may have been available); it simply repeats this assertion: “I was unable to respond to the original NTCAT hearing due to not receiving proper notice. The documents were sent to an outdated address, despite updated contact details being available. As a result I was deprived of the opportunity to present my case.”

[16] In relation to the decision of 24 August 2023, the applicant states in his written submissions annexed to the application for leave to appeal:

The Tribunal failed to adequately consider the *exceptional circumstances* arising from the COVID-19 pandemic, which affected my ability to comply with procedural deadlines and properly manage my business.

As a sole trader, I was operating under significant restrictions, including lockdowns and travel limitations, which impacted my ability to receive important documents and respond to legal proceedings. My work in remote areas such as Mutitjulu and Nhullunbuy further complicated my ability to stay informed of the proceedings.

...

The Tribunal's failure to consider the impact of these restrictions resulted in an unfair decision against me, and I believe an extension of

time to reopen the proceedings should have been granted under Rule 13 of the NTCAT Rules.

[17] No particulars are given of what COVID-19 restrictions were in place at what times and how this affected the applicant's ability to respond to the original proceeding (which he claims he did not have proper notice of in any event).

[18] In the affidavit annexed to the application for leave to appeal, the applicant does not depose to any facts in support of this ground of appeal, again simply restating the submission:

My business and personal life were severely impacted by the COVID-19 pandemic. During this period, I was operating my business under strict lockdowns and travel restrictions, working in remote areas such as Mutitjulu, which limited my ability to receive legal notices and manage paperwork in a timely manner.

Upon learning of the NTCAT decision, I took immediate steps to rectify the situation by filing an application to reopen the proceedings. However, my application was dismissed on 24 August 2023, and an extension of time was refused, without properly considering the exceptional circumstances I faced due to the pandemic.

I am a sole trader without administrative staff to handle legal paperwork. The financial, personal and business pressures brought on by the pandemic made it difficult to manage all legal obligations promptly. I have acted in good faith and with diligence throughout this matter.

I respectfully submit that an extension of time is warranted in this case to allow the appeal to proceed, as the refusal to grant an extension based on the circumstances would result in significant prejudice to me.

[19] The written submissions annexed to the application for an extension of time state:

When I went to the civil registry with my appeal documents for the NTCAT decision, the staff should have:

- Informed me that appeals from NTCAT are handled by the “Supreme Court”.
- Explained the basic steps for filing with the Supreme Court or at least pointed me in the right direction to avoid filing in the wrong court.

Unfortunately, this procedural guidance was not provided. As a result, I mistakenly filed my appeal with the Local Court, which led to a significant issue with the timing and correct jurisdiction for the appeal.

[20] The applicant has implied that the delay in filing the application for leave to appeal has been caused or contributed to because the applicant initially filed the application in the wrong court and then seeks to blame the registry staff in the Local Court for his mistake. However, the applicant does not depose in his affidavit in support of the application for an extension of time that he did in fact initially file the application in the wrong court. Further, the applicant does not state on what date he first attempted to file the application or when he discovered the error. In any case it is not the responsibility of the registry staff to advise the applicant to which court an appeal lies from a decision of NTCAT; it is the responsibility of the applicant to get it right.

[21] The applicant has effectively failed to set out in the written submissions any reason why the application for leave to appeal against the decision of 8 August refusing an extension of time to reopen the original decision was not filed within 28 days of that decision or any explanation for the delay in applying for leave to appeal against that decision.

[22] Insofar as the application for leave to appeal should be construed as also an application for leave to appeal against the original decision of 8 August 2022 (because of the proposed notice of appeal annexed to the application), that application suffers from the same defect. There is effectively no explanation in the written submissions why an application for leave to appeal against that decision was not filed within 28 days of the decision (ie by 5 September 2022). There has been a substantial delay in applying for leave to appeal against both decisions and no adequate explanation has been offered for that delay. That is fatal to the application for an extension of time within which to apply for leave to appeal.

[23] Further, although the alleged denial of procedural fairness, if established, would be an error of law appellable under s 141 of the Act, the applicant has failed to particularise the alleged denial in his written submissions or to depose to facts which would support that ground of appeal. So far as the decision of 24 August 2023 refusing an extension of time within which to apply to reopen the matter is concerned, not only has the applicant not deposed to facts which would support the proposed appeal other than to simply restate the submission in very general terms, it is doubtful whether the alleged failure by the decision maker to take into account the applicant's difficulties in responding to the original claim because of the nature of his business and the existence of the COVID-19 pandemic would amount to an appellable error of law within the meaning of s 141 of the Act.

[24] Even if it were appropriate to grant an extension of time within which to file the application for leave to appeal, I do not think it would be appropriate to grant leave to appeal. Although the discretion to grant leave, conferred by the statute in untrammelled terms, cannot be fettered, an applicant for leave to appeal must at least identify a question of law (as distinct from a question of fact) and a question of law which is important to the appeal's succeeding or failing. The applicant should also show that the decision below is "attended by sufficient doubt to justify the grant of leave to appeal".³ In relation to the decision of 24 August 2024, the applicant has failed to identify any question of law in the proposed notice of appeal; and in relation to both decisions, the applicant has failed to show that either decision is attended with sufficient doubt to justify the grant of leave to appeal. The decision of 8 August 2022 was a judgment in default of appearance after the applicant had been duly served at the registered office of his business. There is no readily discernible error in the reasons for the decision of 24 August 2023, summarised above, and the applicant has not attempted to identify one.

[25] For these reasons, an extension of time within which to file an application for leave to appeal against the NTCAT decisions of 8 August 2022 and 24 August 2023 is refused.

³ *Department of Premier and Cabinet v Hulls* [1999] VSCA 117 (11 August 1999) at [8] – [12] per Phillips JA (with whom Tadgell and Batt JA agreed); *Niemann v. Electronic Industries Ltd* [1978] VicRp 44; [1978] V.R. 431