



Supreme Court of New Zealand

1 November 2011

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

Chala Sani Abdula v The Queen
(SC 80/2010)
[2011] NZSC 130

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

In 2009, the appellant, Mr Abdula, was tried and convicted with a co-accused on a charge of rape. During the trial, he and the co-accused shared the assistance of one interpreter as neither spoke nor had an adequate understanding of English. One of the appellant's grounds of appeal to the Court of Appeal against his conviction was that the quality of interpretation during the first week of his trial was poor and did not meet the standard required to comply with his right to an interpreter under s 24(g) of the Bill of Rights Act 1990. His appeal was dismissed and he appealed against the Court of Appeal's decision to this Court.

The Supreme Court has held that the right to an interpreter under the New Zealand Bill of Rights Act 1990 entitles an accused person to full and contemporaneous knowledge of what is happening at a criminal trial. Interpretation will not be adequate if, as a result of its poor quality, an accused is unable to sufficiently understand the trial process, or any part of the trial that affects the accused's interests, to the extent that there was a real risk of an impediment to the conduct of the defence. While the standard required of interpreters is high, it is not one of perfection. Where compliance with it is challenged, the cumulative effect of deficiencies in the interpretation must be evaluated to determine whether the accused had a sufficient understanding of what took place. This is a matter for judicial assessment and if the right is breached the trial will have been unfair.

The appellant's counsel argued that the qualifications of the interpreter to interpret between the English and Oromo (Ethiopian) languages were inadequate. The Supreme Court,

however, decided that, while it is clearly desirable that programmes for training court interpreters should be further developed, it is not the case that only those holding particular qualifications may be recognised as competent to interpret trials.

The appellant also complained about problems said to arise from the interpreter's soft voice and the lapse from time to time into simultaneous interpretation as evidence was given. The Supreme Court accepted that there were some occasional difficulties of this kind during the trial. However, the trial Judge had regularly taken the initiative in a number of ways to ensure that the interpretation process was working. Another relevant consideration was the failure of the accused or his counsel to raise any objections to the quality of interpretation during the trial. Taken together, these factors indicated that the interpretation provided enabled the accused to understand the nature and detail of the case against him and to make intelligent decisions concerning his defence. For these reasons the appeal was dismissed.

The Supreme Court recognised, however, that the trial did not at times reflect best practice. In future cases, interpretation should not become simultaneous with the giving of evidence. This separation will give accused time to react appropriately and will avoid the risk that the interpreter misses passages of evidence. The interpreter should also speak in a voice loud enough for all in the courtroom to hear and an audio recording should also be made of all criminal trials in which there is an interpreter providing assistance for an accused person. The availability of a recording provides the best means to resolve issues on appeal about the accuracy and general competence of interpretation.

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