



Supreme Court of New Zealand

17 December 2013

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

PHILIP DEAN TAUEKI v THE QUEEN
(SC 64/2012)
[2013] NZSC 146

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.

Mr Taueki, the appellant, is a member of Muaupoko, within whose rohe lies Lake Horowhenua and the surrounding land. That land and the lake bed is Maori freehold land, held by the Lake Horowhenua Trust of which Mr Taueki is a beneficiary. At the time of the events with which the appeal is concerned, Mr Taueki was living near the lake and exercising a role as kaitiaki, assisting the trustees in the management of the lake in a limited way.

The surface of the lake and an area of the surrounding land together form a public recreation reserve, which is administered by a Domain Board under the Reserves Act 1977. Bylaws made by the Domain Board impose restrictions on the use of motorboats and speedboats, and require boats to be washed down before they are taken onto Lake Horowhenua.

The Horowhenua Sailing Club has been sailing on the lake since 1938 and, since 1961, has had various forms of agreement with the Domain Board permitting the Club to occupy and use land within the public domain. In September 2008, members of the Horowhenua Sailing Club were preparing for a day of sailing. Mr Taueki was concerned about the use of a motorboat that the Club members were preparing to put in the water, as he considered it to be a speedboat. He was also concerned that the boat had not been properly cleaned. After indicating to Club members that the boat should not be taken on the lake, Mr Taueki approached a member of the Club and grabbed his clothing around the chest and neck. He was charged with assault.

At his trial in the District Court, Mr Taueki accepted that he had applied force to the member of the Club but argued that he was acting in defence of property in accordance with s 56 of the Crimes Act 1961. Section 56 provides that a person in peaceable possession of land may use limited and reasonable force to prevent another person trespassing on that land, or to remove a trespasser. The trial Judge did not accept this argument, finding that Mr Taueki was not entitled under s 56 to use force against members of the Club for several reasons, including that he was not in peaceable possession of the land at the time. Mr Taueki was convicted of the charge of assault. The conviction was upheld by the Court of Appeal.

The issue before the Supreme Court was whether Mr Taueki was, in terms of s 56 of the Crimes Act, in peaceable possession of the land where the incident occurred, so that he was justified in using reasonable force to prevent a trespass or remove a trespasser.

The Court has unanimously held that possession requires an appropriate degree of actual physical control over the land in question. It must be a single and exclusive possession. Whether a person has sufficient control to constitute possession is a factual question turning on all the circumstances including the nature of the land in question and the manner in which it is commonly enjoyed. For possession to be “peaceable” it is also necessary

that possession has been achieved and maintained other than in the context of an immediate or ongoing dispute. Section 56 does not apply where a person mistakenly believes that he or she is in peaceable possession of the land.

The Court has unanimously decided that Mr Taueki did not have actual control of the land where the incident occurred and, therefore, was not in possession of the land. The defence under s 56 accordingly did not apply.

Mr Taueki's appeal against conviction has accordingly been dismissed.

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