IN THE SUPREME COURT OF NEW ZEALAND

SC 63/2016
[2016] NZSC 134

BETWEEN	CAMILLE IRIANA THOMPSON Applicant
AND	THE ATTORNEY-GENERAL Respondent

Court: Arnold, O'Regan and Ellen France JJ

Counsel: D A Ewen for Applicant
V L Hardy and S M Kinsler for Respondent

Judgment: 7 October 2016

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B We make no award of costs.

REASONS

[1] This is an appeal against a decision of the Court of Appeal in which it upheld a High Court decision dismissing the applicant's claim for a declaration of breach of s 22 of the New Zealand Bill of Rights Act 1990 (Bill of Rights) (right not to be arbitrarily arrested or detained) and public law compensation.[1]

[2] The claim related to the detention of the applicant after she was arrested pursuant to an arrest warrant issued by a District Court Judge under s 72(3) of the Sentencing Act 2002. She was held in police custody for about 15 hours.

---

[1] *Thompson v Attorney-General* [2016] NZCA 215, [2016] 3 NZLR 206 [*Thompson* (CA)]; *Thompson v Attorney-General* [2014] NZHC 2333, (2014) 10 HRNZ 51.

[3] The Court of Appeal found that the District Court Judge who issued the warrant for the applicant's arrest had no power to do so. This meant that the applicant's detention was unlawful and in breach of s 22 of the Bill of Rights.

[4] The Court held that the arrest warrant was unlawfully issued for two reasons. First, the warrant was issued because the applicant did not appear for a sentence review hearing in the District Court. However, unbeknown to the District Court Judge who issued the warrant, the sentence that was to be reviewed had been cancelled a few days earlier by another District Court Judge and the Court records had not been updated to reflect this development. So the warrant was issued in circumstances where the Judge thought that there was jurisdiction to issue it and that there had been a default by the applicant, but in fact neither was the case.[2] Second, the Judge issued the arrest warrant even though there had been no application for the issue of a warrant, as required by s 72(3).[3] The Court of Appeal found that the proximate cause of the applicant's unlawful arrest was the unlawful issue of the warrant for her arrest,[4] which was a judicial act. It found the applicant had no right to compensation in respect of the period for which she was unlawfully obtained.[5]

[5] The Court of Appeal applied this Court's decision in *Attorney-General v Chapman*, in which it was decided that there could be no Crown liability for breaches of the Bill of Rights from decisions of Judges.[6] It rejected an argument advanced on the applicant's behalf that the ratio of *Chapman* was limited to breaches of ss 25 and 27 of the Bill of Rights and did not therefore apply to a breach of s 22, as occurred in the present case.[7]

[6] The applicant seeks to argue in this Court that the Court of Appeal was wrong to find that *Chapman* applied on the facts of this case.

---

2 *Thompson* (CA), above n 1, at [61].
3 At [62].
4 At [77].
5 At [78].
6 *Attorney-General v Chapman* [2011] NZSC 110, [2012] 1 NZLR 462.
7 *Thompson* (CA) at [74].

[7] One of the reasons given by the majority in *Chapman* for their conclusion that there was no right to compensation was that New Zealand had entered a reservation to art 14(6) of the International Covenant on Civil and Political Rights (ICCPR).[8] Article 14(6) requires state parties to provide for a right to compensation for those wrongly convicted if there has been a miscarriage of justice. New Zealand reserved the right not to apply art 14(6) to the extent it was not satisfied by the New Zealand system of ex gratia payments in such circumstances.

[8] The article of the ICCPR that applies to the facts of the present case is art 9, which provides that there should be a right to compensation for victims of unlawful arrest or detention. New Zealand did not enter a reservation to art 9.

[9] The applicant highlights this difference between *Chapman* and the present case and wishes to argue that it is a material distinction justifying a different outcome than occurred in *Chapman*. She also wishes to argue that the concern of the majority in *Chapman* about the possible adverse impact on judicial independence if compensation were payable for Bill of Rights breaches arising from judicial decisions would not arise on the facts of the present case.

[10] We accept that the scope of *Chapman* may be a matter of public importance. But we do not see the present case as an appropriate vehicle for exploring this point. Isolating the above aspects of the reasoning of the majority does not provide an adequate basis for distinguishing *Chapman*. Most of the reasoning of the majority in *Chapman* was applicable to breaches of the Bill of Rights generally, rather than specific to ss 25 and 27. We do not consider there is sufficient likelihood that the arguments for distinguishing *Chapman* would be accepted to justify the granting of leave. Nor do we see any proper basis for revisiting *Chapman*, a relatively recent decision of this Court.

[11] It is not therefore in the interests of justice to grant leave to appeal. The application is dismissed.

---

8 *Chapman*, above n 6, at [199]–[202].

[12] The respondent did not seek costs. Accordingly no award of costs is made.

Solicitors:
Ord Legal, Wellington for Applicant
Crown Law Office, Wellington for Respondent