

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 70/2020  
[2020] NZSC 104

BETWEEN                      TIARE WAAKA TIMOTI  
   Applicant  
  
AND                              NEW ZEALAND POLICE  
   Respondent

Court:                      Glazebrook, O'Regan and Williams JJ  
  
Counsel:                      Applicant in person  
   J M Irwin for Respondent  
  
Judgment:                      1 October 2020

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

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**REASONS**

[1]     The applicant was charged with assaulting a police constable with intent to obstruct her in the execution of her duty and two charges of resisting a police constable in the execution of her duty. There were delays in bringing the case to trial and, ultimately, the Police applied to the District Court for leave to withdraw the charges. Leave was granted.<sup>1</sup>

[2]     The applicant applied to the District Court for an award of costs against the Police. This was rejected in the District Court.<sup>2</sup> The applicant appealed to the High Court, but the appeal was dismissed.<sup>3</sup>

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<sup>1</sup> *New Zealand Police v Waaka-Timoti* [2019] NZDC 26551 (Judge Ingram).

<sup>2</sup> *New Zealand Police v Waaka-Timoti* [2020] NZDC 3272 (Judge Ingram).

<sup>3</sup> *Waaka-Timoti v Police* [2020] NZHC 1541 (Davison J).

[3] The applicant now seeks leave to appeal directly to this Court from the decision of the High Court. The Court must be satisfied that there are exceptional circumstances justifying such a direct appeal, in addition to being satisfied that the criteria for an appeal to this Court are met.<sup>4</sup>

[4] The power to grant costs in criminal cases is provided for in the Costs in Criminal Cases Act 1967 (the 1967 Act). That Act defines “costs” in s 2 as meaning “any expenses properly incurred by a party in carrying out a prosecution, carrying on a defence, or in making or defending an appeal”.

[5] Both the District Court Judge and the High Court Judge referred to the decisions of the Court of Appeal in *R v Meyrick* and *Herlihy v R*.<sup>5</sup> In *Meyrick*, the Court considered whether costs could be awarded to a self-represented litigant, as the applicant was in relation to the prosecutions against him in the District Court. The Court concluded that the definition of “costs” referred to expenses incurred by way of fees paid to barristers and/or solicitors, which meant that there was no jurisdiction for the Court to award costs under the 1967 Act to a self-represented litigant.<sup>6</sup> *Meyrick* was applied by the Court of Appeal in *Herlihy*.<sup>7</sup>

[6] The applicant filed extensive submissions in which he challenges the Police’s jurisdiction over him and, implicitly, the jurisdiction of the courts. Similar challenges to the jurisdiction of the courts based on Māori sovereignty have been dismissed by this Court in the past, and there is no basis for distinguishing previous authority.<sup>8</sup>

[7] We are satisfied that no point of public importance arises in relation to the issues surrounding the award of costs to a litigant in person. This Court has recently considered that issue in the context of a civil proceeding, where the rule that costs could not be awarded to a self-represented litigant was confirmed.<sup>9</sup> There is no basis for distinguishing that case in relation to costs in criminal cases. Nor do we consider there is any risk of a miscarriage of justice if leave is declined.

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<sup>4</sup> Senior Courts Act 2016, ss 74 and 75.

<sup>5</sup> *R v Meyrick* [2008] NZCA 45; and *Herlihy v R* [2020] NZCA 11.

<sup>6</sup> *Meyrick*, above n 5, at [17]–[18].

<sup>7</sup> *Herlihy*, above n 5, at [2].

<sup>8</sup> See, for example, *Wallace v R* [2011] NZSC 10.

<sup>9</sup> *McGuire v Secretary for Justice* [2018] NZSC 116, [2019] 1 NZLR 335 at [88].

[8] The application for leave to appeal is dismissed.

Solicitors:  
Crown Law Office, Wellington for Respondent