ORDER PROHIBITING PUBLICATION OF THE JUDGMENT AND ANY PART OF THE PROCEEDINGS (INCLUDING THE RESULT) IN NEWS MEDIA OR ON THE INTERNET OR OTHER PUBLICLY AVAILABLE DATABASE UNTIL FINAL DISPOSITION OF TRIAL. PUBLICATION IN LAW REPORT OR LAW DIGEST PERMITTED.

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

SC 157/2021
[2022] NZSC 1

BETWEEN	WIKITORIA RANGIHUNA Applicant
AND	THE QUEEN Respondent

Court: William Young, Ellen France and Williams JJ

Counsel: G E Minchin and S J Fraser for Applicant
M L Wong for Respondent

Judgment: 9 February 2022

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B We make an order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available database until final disposition of trial. Publication in law report or law digest is permitted.

REASONS

[1] The applicant challenges a judgment of the Court of Appeal[1] refusing her leave to appeal against a High Court judgment.[2] The High Court dismissed the applicant's

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1 *Rangihuna v R* [2021] NZCA 589 (Goddard, Woolford and Mander JJ) [CA judgment].
2 *Rangihuna v New Zealand Police* [2021] NZHC 1081 (Grice J).

appeal following an unsuccessful pre-trial challenge in the District Court[3] to the admissibility of evidence of cannabis cultivation and possession of cannabis for sale obtained as a result of a search of her home.[4]

[2] The applicant argued that the evidence was inadmissible on the basis that the police entry into her house was unlawful. Relevantly, her argument was that entry was not authorised by s 37(4) of the Bail Act 2000 because the police did not have reasonable grounds to believe that the person named in the warrant was at her address. The District Court held there were reasonable grounds for such a belief. Even if the evidence was improperly obtained, it would nonetheless be admissible under s 30 of the Evidence Act 2006. On appeal, the High Court upheld the approach of the District Court.

[3] The Court of Appeal, in declining leave to appeal, did not consider the proposed appeal against the finding that there were reasonable grounds in terms of s 37(4) raised any issue of general or public importance. Nor was there a risk of miscarriage as the prospect of a successful appeal did not appear to be "strong".[5] Further, if convicted, the applicant could revisit these matters in the context of an appeal against conviction.

[4] The Court said that the other relevant proposed ground of appeal, namely, that the search resulted from institutional racism, "would potentially" raise issues of the requisite importance.[6] But there was no evidential foundation for that argument and it did not appear to have been raised in the District Court. An adjournment had been unsuccessfully sought in the High Court to enable evidence to be obtained in support of this argument and the Court of Appeal made the point that in that Court, "the possibility of such evidence has merely been foreshadowed at a high level of

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3 *New Zealand Police v Collins* [2021] NZDC 3572 (Judge J M Kelly).

4 The applicant and another defendant were jointly charged with cultivation of cannabis and possession of cannabis for the purpose of sale (Misuse of Drugs Act 1975, ss 9(1) and 6(1)(f)). The applicant was also charged with failing without reasonable excuse to assist a constable exercising a search power (Search and Surveillance Act 2012, s 178).

5 CA judgment, above n 1, at [14].

6 At [15].

generality".[7] In the absence of any relevant evidence, the Court said the application did not meet the criteria for leave to appeal.

[5] The applicant says she should have had the opportunity of an adjournment to provide evidence to support the argument about institutional racism.[8] She also wishes to argue that a rights-consistent interpretation of what are "reasonable" grounds under the relevant statutory provisions should have been adopted.

[6] Under s 213(3) of the Criminal Procedure Act 2011, a decision of the Court of Appeal dismissing an application for leave to appeal is "final", which precludes an appeal to this Court from that decision.[9] The applicant's argument is that this Court nonetheless has jurisdiction because the specific provisions of ss 73 and 74 of the Senior Courts Act 2016 override the applicable more general provisions of the Criminal Procedure Act.

[7] We accept the respondent's submission that this argument is misconceived. The relevant provision in terms of jurisdiction is s 71(a) of the Senior Courts Act which links the Court's jurisdiction to appeals authorised by Part 6 of the Criminal Procedure Act of which s 213(3) is a part. Nor does s 228 of the Criminal Procedure Act assist where the second appeal was not "determined".

[8] Nor, assuming without deciding that there is jurisdiction to do so, would we be prepared to grant leave for an appeal directly from the High Court judgment given the criteria for a direct appeal are not satisfied.[10] The applicant can raise these matters after trial if convicted.

[9] The application for leave to appeal is dismissed. For fair trial reasons we make an order prohibiting publication of the judgment and any part of the proceedings (including the result) in news media or on the internet or other publicly available

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7 At [17].

8 Relying on *United Nations Declaration on the Rights of Indigenous People* GA Res 61/295 (2007), art 18.

9 *Lihou v R* [2015] NZSC 161; *Gorgus v R* [2016] NZSC 161; *Silby v New Zealand Police* [2017] NZSC 46; and *Pese v R* [2017] NZSC 77.

10 Senior Courts Act 2016, s 75.

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Solicitors:
Exeo Legal, Wellington for Applicant
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