



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

13 FEBRUARY 2024

MEDIA RELEASE

MAHIA TAMIEFUNA v THE KING

(SC 51/2023)

Hearing in the Supreme Court Wednesday 6 March – Thursday 7 March

CASE HISTORY SYNOPSIS

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court. The synopsis does not comprise part of the reasons for the judgment of the Court of Appeal. A direct link to the judgment is included at the end of this synopsis.

Background

On 30 July 2021, Mr Tamiefuna, the Appellant, was convicted of aggravated robbery after a judge-alone trial in the High Court. The Court of Appeal dismissed his appeal against conviction. The Supreme Court granted his application for leave to appeal on 28 July 2023.

The issue on appeal to this Court is whether certain photographs should have been admitted into evidence at his trial. A police officer took the photographs after stopping a vehicle in which Mr Tamiefuna was a passenger three days after the robbery had taken place. Those photographs depicted Mr Tamiefuna wearing clothes very similar to those of an unidentified individual who had been present at the robbery. The vehicle was also similar to the vehicle used in the robbery.

Decisions in the courts below

Before trial, Mr Tamiefuna challenged the admissibility of the photographs on the basis that they were improperly obtained under s 30 of the Evidence Act 2006. Evidence is “improperly obtained” for the purposes of s 30 if, among other things, it was obtained as a result of a breach of the law by public authorities. Mr Tamiefuna argued that the officer’s photographing of him amounted to an unreasonable search in breach of s 21 of the New Zealand Bill of Rights Act 1990, which provides:

Everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, or correspondence or otherwise.

However, the High Court concluded that the taking of the photographs did not constitute a “search”. Even if it was a search, the Court thought it was reasonable in the circumstances. That meant the photographs were lawfully obtained and admissible.

On appeal, the Court of Appeal concluded that the officer’s actions did breach Mr Tamiefuna’s right to be secure against unreasonable searches. That meant the photographs were improperly obtained.

If evidence is “improperly obtained” for the purposes of s 30 of the Evidence Act, the court must then conduct a balancing process to determine whether excluding the evidence would be proportionate to the impropriety. As part of that balancing process, the court can have regard to—amongst other factors—the importance of any right breached by the impropriety (and the seriousness of the intrusion on that right), the nature of the impropriety, the nature and quality of the evidence, and the severity of the offence with which the defendant is charged.

The Court of Appeal considered that the balancing process favoured admitting the improperly obtained evidence.

This appeal

As noted above, this Court granted Mr Tamiefuna’s application for leave to appeal. The approved question is whether the Court of Appeal was correct to dismiss the appeal. The Supreme Court anticipates that the argument at the hearing will focus on:

- (a) whether the Court of Appeal was correct to find that the photographic evidence was improperly obtained for the purpose of s 30 of the Evidence Act; and
- (b) whether the Court of Appeal was correct in admitting the evidence under s 30 of the Evidence Act (as a result of the balancing exercise).

Because of the issues raised in this appeal, the Office of the Privacy Commissioner | Te Mana Mātāpono Matatapu has been granted the right to provide submissions to the Court.

Viewing of hearing

The courtroom is open to the public.

This hearing can be viewed remotely by a limited number of members of the public. The [Protocol for Remote Viewing of Hearings](#) will apply. No recording is permitted.

If you wish to view this hearing remotely, please email your request with your name and phone number to the Supreme Court Registry, supremecourt@courts.govt.nz, before 1 pm on Tuesday 5 March 2024.

The panel

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|--------------------------|----------------------------|-------------------------------------|------------------------------|---------------------|
| The Hon Justice Williams | The Hon Justice Glazebrook | The Rt Hon Chief Justice Winkelmann | The Hon Justice Ellen France | The Hon Justice Kós |
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Judges as seen from the public gallery

Counsel

- Mahia Tamiefuna (Appellant): *S J Gray, E P Priest and S C Shao*
- The King (Respondent): *P D Marshall and A J Ewing*
- Office of the Privacy Commissioner (Intervener): *B J R Keith and J M Hayward*

Sitting hours

Court will begin at 10:00am and conclude at 4:00pm with adjournments taken from 11:30am

to 11:45am and from 1:00pm to 2:15pm. There is no afternoon adjournment.

Enquiries

Any enquiries about the hearing should be directed via email to supremecourt@justice.govt.nz. While attending the hearing, enquiries can also be directed to the Court Registry, which is located outside the main courtroom in the Supreme Court foyer.

Contact person:

Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: [\[2023\] NZCA 163](#) (9 May 2023)

Supreme Court leave decision: [\[2023\] NZSC 93](#) (28 July 2023)

