

**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 38/2005  
[2006] NZSC 1**

BETWEEN

PIMTHONG UDOMPUN  
Applicant

AND

MINISTER OF IMMIGRATION AND  
NEW ZEALAND POLICE  
Respondents

Hearing: 3 February 2006

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: O Woodroffe for Applicant  
C Gwyn and B Keith for Respondents

Judgment: 9 February 2006

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**JUDGMENT OF THE COURT**

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

**REASONS**

[1] Mrs Udompun brought a claim in the High Court that her rights under the New Zealand Bill of Rights Act 1990 had been breached in several respects when she sought a temporary immigration permit to enter New Zealand on two occasions, the first in 1999 at Christchurch and the second in 2000 at Auckland. The High Court found in her favour in respect of both events and awarded her a global sum of damages of \$50,000.

[2] On the Crown's appeal, the Court of Appeal reversed all findings of breach save in respect of a finding relating to the occasion in 2000 that, while she was detained in Auckland pending removal she had, in breach of s 23(5), not been treated

with respect for her inherent dignity. This finding related to the failure of the Police to provide her with sanitary products combined with a failure to provide a change of clothing.

[3] The Court of Appeal set aside the High Court's damages award and, by majority, awarded her \$4,000 for the single Bill of Rights breach which had been sustained. Dissenting on this question, Hammond J would have awarded her \$10,000.

[4] Mrs Udompun's application for leave to appeal seeks reinstatement of the other liability findings in her favour and, in respect of the s 23(5) breach, an increase in the damages.

[5] The issue primarily sought to be addressed for the applicant is whether in the circumstances the immigration officers complied with Bill of Rights requirements in the way in which they communicated with Mrs Udompun, a Thai national and non-speaker of English, through an interpreter. In Christchurch, on a holiday weekend, no professional interpreter had been available and a member of Mrs Udompun's travelling party who spoke English was the vehicle for communication with the other members of that party. Mrs Woodroffe, for the applicant, said that it would be submitted on appeal that communication should have been on an individual rather than group basis, that a professional interpreter should have been used and that a record of what was said should have been made, by way of a tape recording, so that the accuracy of the translation could be checked.

[6] So far as the interview at Auckland is concerned, the argument would be that Mrs Udompun's rights were not adequately brought home to her by use of a notice written in the Thai language. So far as quantum is concerned, it would be submitted that the sum awarded was inadequate to vindicate the breach of the s 23(5) right.

[7] Each of the proposed grounds of appeal on liability entails application of uncontentious principle to the particular facts of the case. It was accepted that an interpreter should be available to applicants for temporary entry permits. The issue would rather be whether what was done in the particular circumstances was

sufficient to give effect to Mrs Udompun's rights. No point of general or public importance arises out of the Court of Appeal's assessment that the assistance provided was not in breach of those rights. On quantum, we are not persuaded that it could arguably be said that the award was outside the range properly open to the Court or the authorities. Accordingly no question of general principle arises, nor did it arise as between the majority of the Court of Appeal and Hammond J in his dissenting judgment.

[8] We are satisfied that leave should not be granted in respect of any of these grounds or in respect of others not pursued in Mrs Woodroffe's oral submissions because in none of them would the appeal raise any point of general or public importance, nor is there any basis for the proposition that there has been a miscarriage of justice.

Solicitors:  
Woodroffe Law Partnership, Auckland for Applicant  
Crown Law Office, for Respondents