

IN THE SUPREME COURT OF NEW ZEALAND

**SC 3/2008
[2008] NZSC 19**

BETWEEN MATINI VAIHU
 Applicant

AND THE ATTORNEY-GENERAL
 Respondent

Court: Blanchard, Tipping and McGrath JJ

Counsel: N Levy for Applicant
 B J Keith for Respondent

Judgment: 7 April 2008

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant has sought leave to appeal against the dismissal by the High Court and the Court of Appeal of his claim for exemplary damages for breach of s 9 of the Bill of Rights Act 1990. He had the misfortune to be, quite innocently, in an area of bush where, at night, a police dog on a tracking lead was attempting to locate a suspected offender. The applicant was bitten on the arm by the police dog. The police officer who was handling the dog had given no instructions to the dog to seize the applicant.

[2] The injury suffered by the applicant would have been quite minor but for the fact that he was undergoing dialysis treatment and had had an arteriovenous fistula surgically inserted in the arm which was bitten. As a result of the bite, the fistula

was disturbed and the cephalic vein was ruptured. The injury was potentially life-threatening. Police officers took immediate steps to staunch the bleeding and obtain medical assistance for Mr Vaihu.

[3] The applicant wishes to argue that s 9 was breached by the police because the handler was using the dog as a weapon and deliberately allowed it to bite Mr Vaihu. There are, however, findings in both Courts below that this was not so; that the dog had not been given any instructions to attack Mr Vaihu and bit him apparently in response to his own actions which it perceived as threatening. In essence, the biting was unintended by the dog handler.

[4] The applicant also wishes to contend, on a more general or abstract basis, that the use of a police dog to search for suspected offenders, at least in relation to minor offences, will give rise to a breach of s 9. It seems to us that this proposed argument would be an extremely difficult proposition to establish, especially so when, as the Court of Appeal observed, no allegation has been pleaded of any systemic failure by the police in relation to the training or use of dogs. It seems doubtful in any event whether the unintentional infliction of an injury in circumstances of this kind, no matter that the injury proved to be serious for the particular person, could amount to a breach of s 9.

[5] We are dismissing the appeal because it has no prospect of success and hence there has been no miscarriage of justice.

Solicitors:
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