

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**CRI-2017-004-005092**

**THE QUEEN**

v

**MOHAMED SAMSUDEEN**

Hearing: 4 September 2021 (via VMR and telephone conference)

Appearances: B Dickie and H Steele for the Crown  
K Raftery QC and D Mansouri-Rad for Mr Samsudeen's family members  
R Stewart for the New Zealand Herald, Newshub, Radio NZ Ltd, Stuff Ltd and TVNZ Ltd

Ruling: 4 September 2021

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**RULING OF WYLIE J**

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Solicitors/counsel:  
Meredith Connell, Auckland  
K Raftery QC, Auckland  
D Manning, Auckland  
D Mansouri-Rad, Auckland  
R Stewart, Auckland  
S Lamain, Auckland

[1] I refer to my Order made on 3 September 2021.

[2] I convened a further telephone conference with counsel to consider the application of s 151 of the Immigration Act 2009 to various rulings and minutes already issued by the Court. That section imposes statutory obligations of confidentiality. It is not dependent on a Court order. If the section applies, it will be necessary to redact various passages in judgments and minutes issued to delete anything recording that Mr Samsudeen is a refugee, his immigration status and the particulars of his claim or status, on the basis that disclosure of these facts would tend to identify him.

[3] In an email sent out by the Registrar to counsel prior to the hearing, I asked counsel to consider the application of the section, and in particular, the effect of s 151(2)(e) and (6).

[4] In the course of the hearing, Mr Raftery QC sought an extension of 12 hours to the suspension Order that I made late last night. I will come to that shortly.

[5] First, I deal with the s 151 issue.

[6] Relevantly, the section provides as follows:

**[151] Confidentiality to be maintained in respect of claimants, refugees, and protected persons**

- (1) Confidentiality as to the fact that a person is a claimant, a refugee, or a protected person, and as to the particulars relating to the person's claim or status, must at all times during and subsequent to the determination of the claim or other matter be maintained by all persons and, in a particular case, may require confidentiality to be maintained as to the very fact or existence of a claim or case, if disclosure of its fact or existence would—
  - (a) tend to identify the person concerned; or
  - (b) be likely to endanger the safety of any person.
- (2) Despite subsection (1), the fact of a claim or particulars relating to a claim may be disclosed—

...

- (b) for the purposes of the maintenance of the law, including for the prevention, investigation, and detection of offences in New Zealand or elsewhere; or
  - (e) if, in the circumstances of the particular case, there is no serious possibility that the safety of the claimant or any other person would be endangered by the disclosure of the information.
- (3) In determining whether information may be released under subsection (2)(e), the person considering whether to disclose the information may have regard to the protections that the person, agency, or body to whom the information is disclosed may apply to the information, including—
- (a) any applicable requirements of the Privacy Act 2020; and
  - (b) any orders of the Tribunal or other court; and
  - (c) any protection mechanisms that the person, agency, or body itself must or may apply.
- (4) If, in relation to a claim or particulars relating to a claim, the test in subsection (2)(e) is satisfied (the person concerned having considered the matters in subsection (3)),—
- (a) the chief executive may publish the decision of a refugee and protection officer relating to the claim if the chief executive determines that, in the circumstances of the particular case, it is in the public interest to do so:
  - (b) the Attorney-General may, subject to any orders of the Tribunal, publish the decision of the Tribunal relating to the claim if the Attorney-General determines that, in the circumstances of the particular case, it is in the public interest to do so.

...

- [6] Nothing in this section prevents the disclosure of the fact that a person is a claimant, a refugee, or a protected person, or disclosure of particulars in relation to a claimant, a refugee, or a protected person, to the extent that the person concerned—
- (a) has expressly waived his or her right to confidentiality under this section; or

- (b) by his or her words or actions, impliedly waived his or her right to confidentiality under this section.

[7] Mr Dickie, for the Crown, adopted what he described as a conservative approach. He argued that ss 151(2)(e) and (6) apply and submitted that the fact that Mr Samsudeen was a refugee, that he was granted refugee status, that there was notification of an intention to revoke that status and that he challenged that notification, should be placed in the public domain. He was prepared to accept that the particulars relating to Mr Samsudeen's claim for refugee status should attract confidentiality as set out in s 151(1). He surmised that the underlying concern of family members is Mr Samsudeen's alleged offending at Lynn Mall and his apparent association with Isis. He argued that disclosure of his refugee status cannot however impact on the safety of family members, given reporting which already has taken place in Sri Lanka (it extends to Mr Samsudeen's name). He argued that this reporting is readily accessible via internet search engines in other parts of the world where members of Mr Samsudeen's family reside. He also argued that subsection (6) is engaged and that, by engaging in the events which are said to have occurred at the supermarket at Lynn Mall, Mr Samsudeen has waived any right to confidentiality that he had under s 151(1).

[8] Mr Raftery, appearing with Mr Mansouri-Rad, agreed with Mr Dickie in large part. He explained that the family were only contacted late last night and that they did not then know that Mr Samsudeen was dead or what is said to have occurred in this country. He told me that it came as a huge shock to family members. He nevertheless argued that s 151(2)(e) is engaged because there is a risk that publication of the particulars of Mr Samsudeen's claim to refugee status might endanger the safety of his family members. Mr Raftery responsibly accepted that there is no evidence as to this issue and he acknowledged that there is a need to put as much as is possible in the public domain. He accepted that the facts relevant to Mr Samsudeen's status as a refugee in this country can be put in the public domain, but he resisted the suggestion that the particulars relating to Mr Samsudeen's claim to refugee status should also be put in the public domain. He denied that there has been any waiver, asserting that while Mr Samsudeen may have waived his own rights, he has not impliedly waived the rights of his family members.

[9] Mr Stewart, appearing for a large number of media organisations, took a rather different view. He emphasised the principle of open justice and the high public interest in what has occurred. He argued that the media should be free to publish every aspect of the various judgments which have issued from this Court, including my judgment of 3 July 2018 where I set out why Mr Samsudeen was initially granted name suppression. He argued that it is important that the public should be able to understand why those orders were made. He put it to me that it cannot be suggested that there is a serious possibility that the safety of family members will be compromised if the facts and particulars of Mr Samsudeen's refugee status are put in the public domain. He accepted that the family may be drawn into an unfortunate situation if Mr Samsudeen's name is released, but pointed out that that "horse has already bolted". He emphasised that there has been publication of Mr Samsudeen's name in Sri Lanka and that further publication of his name overseas is inevitable.

[10] Having considered counsel's submissions, I have concluded that the statutory obligations as to confidentiality set out in s 151(1) no longer apply, and notwithstanding the fact that disclosure of the fact that Mr Samsudeen is a refugee and is seeking to maintain that status, is likely to identify him.

[11] First, in my judgment, s 151(2)(e) applies. As I noted in the Order issued late last night, Mr Samsudeen's safety is no longer in issue. Nor in my view, is there any serious possibility that the safety of other persons would be endangered by disclosure of Mr Samsudeen's refugee status and the particulars relating to his claim to that status. What would be disclosed is the fact that Mr Samsudeen is a refugee in this country, that the immigration authorities had given notice of their intention to revoke his refugee status, that he has challenged that notice, and why he sought refugee status in the first place. I agree with Mr Stewart that there is a high public interest in these matters and that it is unlikely that publication of these matters could endanger the safety of other persons. It may be that disclosure of the fact that Mr Samsudeen offended as alleged in New Zealand and that he apparently holds extremist views might endanger other persons, in particular, members of his family, but, in my judgment, it is difficult to see that their safety is endangered simply by disclosure of the information in respect of which obligations of confidentiality are imposed by s 151(1).

[12] If I am wrong in that regard, in my judgment, s 151(6) applies. Mr Samsudeen has impliedly waived his right to confidentiality under s 151(1). By allegedly committing serious criminal offences, which have resulted in his death, Mr Samsudeen has waived the confidentiality to which he otherwise might be entitled. The subsection seems to contemplate disclosure in circumstances such as those that have arisen. It ties back to s 151(2)(b), which provides the fact of a claim or particulars relating to a claim may be disclosed for the purposes of the maintenance of the law, including the prevention, investigation and detection of offences in New Zealand or elsewhere.

[13] Accordingly, I have concluded that s 151 has no ongoing application. The various minutes and judgments issued by the Court do not require redaction to remove reference to Mr Samsudeen's immigration status or to the particulars relating to that claim or status. Accordingly, the Crown is released from the undertakings referred to in paras [8] and [9] of the Order made by me last night.

[14] I now turn to the request made by Mr Raftery and Mr Mansouri-Rad that the family should be given a further 12 hours to consider their position.

[15] Mr Raftery essentially sought to extend time on humanitarian grounds. He advised me from the bar that Mr Samsudeen's father is elderly, that he is unwell and that he does not as yet know what has happened to his son. He told me that the family are seeking time to impart the information to Mr Samsudeen's father as gently as is reasonably practicable.

[16] Mr Stewart opposed the application. He pointed out that Mr Samsudeen's name has already been put in the public domain in other jurisdictions and again submitted that it is inevitable that publication of the name will occur elsewhere around the world.

[17] Mr Dickie also opposed the application. He did so on jurisdictional grounds. He argued that there are no extant orders suppressing Mr Samsudeen's name in relation to what is said to have occurred at the supermarket in Lynn Mall. He noted that the orders suppressing Mr Samsudeen's name were made in relation to earlier offending. He submitted that in effect Mr Raftery is seeking suppression of Mr Samsudeen's

name in relation to the alleged attack at Lynn Mall, that there is no application in that regard, and that it is not why this afternoon's hearing was convened.

[18] On balance, I accept the views expressed by Mr Dickie. There are no suppression orders in relation to what is said to have happened at Lynn Mall. I have simply recorded suppression orders earlier made by me in relation to earlier offending. In effect, Mr Raftery was seeking suppression of Mr Samsudeen's name in respect of the alleged offending in relation to which there are no criminal proceedings. There is no jurisdictional basis on which to make such an order.

[19] I have sympathy for Mr Samsudeen's family but the reality remains that Mr Samsudeen's father is going to have to be informed what happened sooner rather than later. There could well be other ways in which the family can lessen the impact of the news for him. I cannot control what is reported by the media off-shore. The fact that Mr Samsudeen's name has already been reported off-shore to my mind militates against any further extension. Accordingly, the application is declined.

[20] I suspended the operation of my Order made last night for a period of 24 hours to give members of Mr Samsudeen's family the opportunity to make application on their own behalf. That period has not as yet expired. This Ruling is likewise suspended until the expiry of that 24 hour period, at 11.00pm tonight.

### **Additional orders**

[21] Ms Owen, from Stuff, and Mr Cooke, from TVNZ, requested a copy of the Order that I made last night.

[22] By consent, I grant the applications.

[23] Also by consent, I direct that a copy of this Ruling is to be made available to all media representatives who attended today's hearing.

[24] Media representatives will no doubt seek access to the judgment I gave on 3 July 2018 and to the sentencing notes issued by me on 19 September 2018. Those notes and any other materials the media may wish to access, are to be sought through

the Registrar. The Registrar is authorised to send out my judgment of 3 July 2018 and my sentencing notes to the media representatives who attended this afternoon's hearing once this order takes effect.

A handwritten signature in blue ink, consisting of a stylized 'W' followed by a horizontal line and a 'J'.

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Wylie J