

IN THE SUPREME COURT OF NEW ZEALAND

**SC 50/05
[2005] NZSC 65**

BETWEEN

ALAIN MICHAEL YVES MAFART AND
DOMINIQUE ANGELA FRANCOISE
PRIEUR
Appellants

AND

TELEVISION NEW ZEALAND
LIMITED
Respondent

Court: Tipping and McGrath JJ

Counsel: G P Curry and S L Cogan for Appellants
W Akel for Respondent

Judgment: 21 September 2005

JUDGMENT OF THE COURT

The application for leave to appeal is allowed.

REASONS

[1] The applicants seek leave to appeal against a judgment of the Court of Appeal, delivered on 4 August 2005, dismissing an appeal from a decision of the High Court which had granted the respondent, Television New Zealand, leave to search a Court file relating to a criminal proceeding in which the applicants had pleaded guilty to charges of manslaughter. The charges arose from the death of a person on board the Greenpeace ship “Rainbow Warrior” when it was blown up in Auckland Harbour in 1985. The High Court Judge’s direction to the Registrar to make the file concerned available for inspection and copying extended to certain videotapes on the file, two of which contained closed circuit television footage of the District Court’s committal hearing.

[2] The proposed appeal raises an issue concerning the jurisdiction of the Court of Appeal to hear appeals against the decisions of High Court Judges to grant or refuse leave to search Court files under the Criminal Proceedings (Search of Court Records) Rules 1974. Having considered written submissions for the parties the Court is satisfied that no assistance will be derived from an oral hearing and that the appeal involves a matter of general or public importance such that it is necessary in the interests of justice for the Court to hear and determine it. Accordingly the application for leave to appeal is granted.

[3] The Court of Appeal confined its judgment to the issue of its jurisdiction to hear and determine the appeal. If the appeal to this Court is successful that will raise the further question of whether the Court should remit the matter to the Court of Appeal for further consideration and decision, or go on to decide itself the merits of the appeal against the High Court's decision.

[4] In case this stage is reached, this Court requires counsel to address in their written arguments the merits of the applicants' appeal against the High Court's decision and to be ready to advance them at the oral hearing of the appeal, after they have first argued the jurisdictional issue.

[5] For the purposes of r 29(1) of the Supreme Court Rules 2004, the following grounds of appeal are accordingly approved:

1. Whether the determination of the Court of Appeal that it had no jurisdiction to hear the respondent's appeal against the decision of the High Court was correct.

2. Whether, if the Court decides that the Court of Appeal did have such jurisdiction, the matter should be remitted to the Court of Appeal for further hearing and decision, or whether this Court should itself hear and determine the merits of the applicants' appeal to the Court of Appeal.

3. Whether, if this Court reaches the point of deciding to determine the merits of the appeal, the High Court's decision to grant leave to search the file and take copies of the videotapes, and to make other incidental orders was wrong.

[6] Security for costs must be given by the appellants in the sum of \$6,000, to be paid to or secured, to the satisfaction of the Registrar, within 10 working days of the date of this order.

[7] The Registrar is directed to fix a date of hearing of the appeal, in consultation with counsel. If either party wishes the appeal to be given urgency every effort should be made to allocate a fixture before the end of this year.

[8] The stay order made by the High Court on 8 August 2005 will continue in force until the appeal is determined subject to each party having leave to apply in respect of it.

Solicitors:

Russell McVeagh, Auckland for Appellants
Simpson Grierson, Auckland for Respondent