IN THE SUPREME COURT OF NEW ZEALAND

SC 6/2006
[2006] NZSC 95

BETWEEN	CHRISTOPHER HAPIMANA BEN MARK TAUNOA AND ORS Appellants and Cross-Respondent
AND	THE ATTORNEY GENERAL AND ANOR Respondents

Hearing: 2 November 2006

Court: Elias CJ, Blanchard, Tipping, McGrath and Henry JJ

Counsel: T Ellis, D La Hood and A C Wills for Appellants and Cross-Respondent
C Gwyn, D J Boldt and B Keith for Respondents

Judgment: 13 November 2006

JUDGMENT OF THE COURT – APPLICATION FOR STAY, STRIKING OUT OR DECLARATION OF INCONSISTENCY

The application is dismissed.

REASONS

[1] The appellants and the cross-respondent have brought an application seeking a stay or striking out of the cross-appeal. They say that because of the enactment of the Prisoners' and Victims' Claims Act 2005 the hearing of the cross-appeal cannot be fair. In the alternative, they ask the Court to make a declaration that the Act is inconsistent with the New Zealand Bill of Rights Act 1990.

[2] The Prisoners' and Victims' Claims Act came into force on 4 June 2005, at a time when a decision from the Court of Appeal in this case was reserved after a hearing which concluded on 2 June. In brief, the Act places certain restrictions on the disposition of monetary compensation or damages which the Crown may be

ordered to pay to a person under control or supervision (including a prisoner). It requires the amount to be held for a period by the Secretary for Justice and facilitates the making of claims against the fund so constituted by any victims of such persons.

[3] Mr Ellis mounted a strong attack on the Act, advising the Court that it clearly affected the remedy in this case of the appellants and the cross-respondent and asserting that it makes it impossible for the appeal relating to compensation to be a fair appeal. It has, he said, restricted access to this Court and thereby denied an effective remedy.

[4] We cannot see how that can be so, since the Act places no restriction on the ability of the Court to determine the issues before it, on which it has given leave, namely whether any monetary compensation should properly have been awarded to the appellants and the cross-respondent and, if so, the appropriate sums. The Act will operate only after those questions have been determined and obviously will have no operation at all if the first of them is given a negative answer. The Court is not in the least inhibited by the Act in making the necessary determinations on the cross-appeal nor are the parties in any way precluded by it in the arguments they present to the Court.[1]

[5] Therefore, assuming but not deciding that jurisdiction exists for the Court to stay or to strike out the cross-appeal, there is no substantive basis to justify any such course.

[6] The alternative relief sought is a declaration of inconsistency. It is plain that this is beyond the jurisdiction of the Court in the circumstances of the present cross-appeal. The subject matter of the application has never been before the High Court or the Court of Appeal. The appellants and cross-respondent are therefore seeking to bring a new case directly to this Court. The Supreme Court is established by statute and has no original jurisdiction. Under s 25(1) of the Supreme Court Act 2003, to which Mr Ellis directed attention, the Court has wide general powers on an appeal

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[1] The appellants formally sought by their own appeals an increase in the sums awarded to them but counsel has told the Court that this is not pressed and was "rhetorical". The Court would not, in any event, have been prevented by the Act from ordering payment of greater sums if those quantum appeals had actually been advanced.

"in a proceeding that has been heard in a New Zealand court" to make "any order, or grant any relief, that could have been made or granted by that court", that is, by the Court appealed from. No relief in the form now sought could have been granted in the Court of Appeal for the obvious reason that no issue relating to the Act was before it. This Court also has under s 25(1) all the powers of the Court of Appeal even if the proceeding has not been heard in that Court. But, again, as the issue was never before the High Court, the Court of Appeal would have lacked any power to hear it, for it too has no originating jurisdiction.

[7] Mr Ellis's broad submission was that the Act was, in his words, unjustified in a free and democratic society, and seriously offensive to international human rights law and to the rule of law itself. He therefore urged us to assume an extraordinary jurisdiction to consider and determine his alternative application, as we understood him, effectively out of necessity. He appeared to be contending that otherwise his clients would never be able to endeavour to obtain relief against the operation of the Act.

[8] We do not agree. If some relief of the character sought might be available from the courts, on which we express no opinion, the appropriate place for the proceeding to be commenced is in the High Court which, unlike the appeal courts, has a general jurisdiction.

Solicitors:
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