

**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI**

**SC 50/2021  
[2021] NZSC 100**

BETWEEN DONNA MARY NEWLANDS  
Applicant

AND NELSON CITY COUNCIL  
Respondent

Court: William Young, O'Regan and Ellen France JJ

Counsel: B A Edwards for Applicant  
G A Rainey and A C Besier for Respondent

Judgment: 12 August 2021

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**JUDGMENT OF THE COURT**

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

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**REASONS**

**Offences under the Dog Control Act 1996**

[1] The applicant was charged with two offences under the Dog Control Act 1996. The first was a charge under s 33E(1)(a) of the Act, that being the owner of a menacing dog (named Baloo) she allowed the dog to be at large in a public place without a muzzle. The applicant pleaded guilty to this offence. The second was an offence contrary to s 57(2) of the Act, that she was the owner of a dog that attacked an animal (being another dog named Jasmine). The applicant defended this charge but was convicted after a District Court trial.<sup>1</sup>

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<sup>1</sup> *Nelson City Council v Newlands* [2020] NZDC 26674 (Judge Tuohy).

## **Destruction order**

[2] Under s 57(3) of the Act, the court must make an order for the destruction of a dog that has committed an attack in terms of s 57 “unless it is satisfied that the circumstances of the offence were exceptional and do not warrant destruction of the dog”. Judge Tuohy found the circumstances were not exceptional and ordered destruction of Baloo.<sup>2</sup> The Judge also sentenced the applicant to pay \$1,000 emotional harm reparation to the owner of Jasmine.<sup>3</sup>

## **High Court appeal**

[3] The applicant appealed to the High Court against her conviction under s 57 and against sentence. The focus of the latter was on the destruction order.

[4] In the High Court, the applicant argued that there had been no “attack” in terms of s 57, but was unsuccessful in that argument.<sup>4</sup> She next argued that s 57 was not a strict liability offence, but rather one that required proof of negligence. The High Court Judge rejected this, citing the Court of Appeal decision in *Epiha v Tauranga City Council*.<sup>5</sup> The Judge noted that even if the applicant had established that s 57 required proof of negligence, the applicant would have been convicted in any event because Baloo was required by law to be muzzled and he was not, which would necessarily qualify as an absence of reasonable care.<sup>6</sup>

[5] In relation to the destruction order, the High Court Judge agreed with the District Court Judge that there was no basis for concluding that the destruction of the dog was not necessary to remove the risk of a future attack, and so upheld the destruction order.<sup>7</sup>

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<sup>2</sup> At [48].

<sup>3</sup> At [54].

<sup>4</sup> *Newlands v Nelson City Council* [2021] NZHC 652 (Ellis J), at [20].

<sup>5</sup> At [22]–[24], citing *Epiha v Tauranga City Council* [2017] NZCA 511, [2017] NZAR 1664.

<sup>6</sup> At [25].

<sup>7</sup> At [29]–[30].

## **Application for leave**

[6] The applicant now seeks leave to appeal directly to this Court from the High Court. She seeks to argue that s 57(2) is not a strict liability offence.

[7] In her submissions, she also purports to seek leave to appeal against three decisions of the Court of Appeal which have confirmed that s 57 is a strict liability offence.<sup>8</sup> As she is not a party to any of those decisions, she cannot appeal against them. However, if leave to appeal were granted, the correctness or otherwise of those decisions would obviously be in issue.

[8] Although it is not mentioned in her notice of appeal, the applicant says in her submissions in support of the application that she also seeks leave to appeal against her conviction under s 33E of the Act, this notwithstanding the fact that she pleaded guilty to that offence. In effect, that would involve a double leapfrog, being a direct appeal to this Court from the decision of the District Court to enter a conviction under s 33E. Given the guilty plea and the undisputed facts that Baloo was not muzzled on a public beach, there is no proper basis for leave to be given to appeal against the s 33E conviction.

[9] The applicant also indicates in her submissions that she seeks to appeal against the destruction order, which is an appeal against sentence. She seeks to challenge the finding that there were no exceptional circumstances that would permit the District Court to decline to make a destruction order under s 57(3) of the Act.

### *Strict liability*

[10] In *Shepherd v Auckland Council*, this Court noted that it had not considered the issue of strict liability under the Dog Control Act, but that on the facts of the case, Mr Shepherd would have been convicted in any event, even if the offence at issue (s 58 of the Act) had not been a strict liability offence.<sup>9</sup>

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<sup>8</sup> *Epiha*, above n 5, *Walker v Nelson City Council* [2017] NZCA 526 and *Auckland Council v Hill* [2020] NZCA 52, [2020] 3 NZLR 603.

<sup>9</sup> *Shepherd v Auckland Council* [2018] NZSC 25 at [7].

[11] In *Epiha*, the Court of Appeal pointed out that decisions of the High Court since 1984 have confirmed that offences such as s 57(2) are strict liability offences.<sup>10</sup> Thus, this is a matter of settled law. While this Court has not considered the point, we note that even if we were satisfied that a point of law justifying an appeal to this Court arose, on the facts of the present case the outcome would not be affected.<sup>11</sup> Nor do we consider there is any risk of a miscarriage of justice in the way the case was determined at the District Court and High Court level.<sup>12</sup>

[12] In those circumstances, there is no proper basis for the grant of leave, and even less for the grant of leave for a direct appeal from the High Court.<sup>13</sup>

### *Challenge to destruction order*

[13] In relation to the proposed appeal against the destruction order, we see this as a factual assessment, which has been the subject of concurrent findings by the District Court and High Court. No point of public importance arises.<sup>14</sup> Nor do we see any appearance of a miscarriage.<sup>15</sup>

### **Result**

[14] The application for leave to appeal is therefore dismissed.

Solicitors:  
Straighttalk Law, Tauranga for Applicant  
Tasman Law Ltd, Nelson for Respondent

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<sup>10</sup> *Epiha*, above n 5, at [6].

<sup>11</sup> For the reason highlighted by the High Court Judge, as noted above, at [4].

<sup>12</sup> Senior Courts Act 2016, s 74(2)(b).

<sup>13</sup> Section 75.

<sup>14</sup> Section 74(2)(a).

<sup>15</sup> Section 74(2)(b).