

REDACTED JUDGMENT

**ORDER SUPPRESSING THE GRANT OF THE APPLICATION FOR THE  
ADJOURNMENT UNTIL 17 JUNE 2022 AS SET OUT IN [16].**

**ORDER SUPPRESSING DETAILS OF COUNSELS' MEDICAL DETAILS AS  
SET OUT AT [17].**

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

**I TE KŌTI MATUA O AOTEAROA  
ŌTAUTAHI ROHE**

**CRI-2019-009-8869  
[2022] NZHC 1355**

**THE QUEEN**

v

**DAVID CHARLES BENBOW**

Hearing: 9 June 2022

Appearances: B Hawes and C J Boshier for Crown  
K J Basire and K J Gray for Defendant

Judgment: 17 June 2022

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**JUDGMENT OF DUNNINGHAM J**

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*This judgment was delivered by me on 17 June 2022 at 10 am,  
pursuant to Rule 11.5 of the High Court Rules.*

*Registrar/Deputy Registrar  
Date.....*

[1] This is an application to adjourn the trial of David Benbow which had been set down to be heard on 1 August 2022.

[2] This is not the first application for adjournment. There have been others for different reasons, two of which were granted. The scheduled 8 February 2021 trial was adjourned by Nation J, and Doogue J adjourned the new 9 August 2021 trial date, which eventually led to the trial being set down for the current date of 1 August 2022.

[3] However, this application is made for quite different reasons from the previous adjournments. As counsel for Mr Benbow point out, following the current trial date being set down, lead counsel Ms Sewell tragically passed away on 27 November 2021. It appears from submissions that Ms Sewell was the lawyer who dealt with Mr Benbow exclusively, and her death was a major disruption to trial preparation. Following her death Mr Benbow confirmed he wanted remaining counsel to continue to act for him, but he also advised that he wanted a Queen's Counsel to replace Ms Sewell.

[4] Counsel for the defence advise that they were able to engage the services of Mr Kieran Raftery QC, from Auckland, and legal aid approval for his appointment was ultimately granted in late January 2022. He was set to take over as lead counsel in April and appear on a pre-trial application which ultimately did not proceed. However, by 11 April 2022, he and all other defence counsel had contracted COVID. The expectation however, was that although time had been lost to sickness, Mr Raftery and Ms Basire would recover. [Redacted]

[5] The situation therefore, as explained by Ms Gray, is that two out of the three counsel assigned by Legal Aid are now unavailable for trial. She is now in a position where seven and a half weeks before his trial on a charge of murder and with a Crown case made up of 150 Crown witnesses and entailing numerous police hours of investigation, she is the only one of three counsel who is still able to represent Mr Benbow.

[6] Counsel submits the trial cannot be picked up by other counsel in the short time available. Ms Gray explains that numerous attempts have been made to engage alternate counsel, but none have been successful. It was explained to me that this is a particularly complex murder trial and has an extraordinary number of documents to be perused.<sup>1</sup> It would be almost impossible for new counsel to familiarise themselves with this material in the time left to trial. Furthermore, Mr Hawes, too, accepts that this is a more complex trial than usual.

[7] In Ms Gray's submissions, any attempt to proceed with a trial on 1 August 2022 would mean Mr Benbow cannot have a fair trial, and it is her submission that Mr Benbow is now in the unavoidable position of seeking this further adjournment due to the health issues in relation to two key members of the defence team.

[8] While the Crown is sympathetic to the position, it resists the application for the adjournment at least until, or unless, an early alternative trial date can be confirmed.

[9] Mr Hawes points out that the effects of a lengthy further adjournment would be profound. The victim, Mr McGrath, is presently regarded as legally being in limbo and is officially simply described as "missing". That is having an enormous impact on his family who are unable to address the types of issues that would normally be required following a family member's death, such as the sale of property, the ability to operate bank accounts and the like.

[10] Mr Hawes also points out that as time passes, witnesses are being lost and the quality of witnesses' evidence will continue to diminish with the passage of time. Furthermore, Mr Benbow continues to be on strict bail conditions while he awaits his trial.

[11] Mr Hawes suggests alternate senior counsel could still be sought to step in at short notice. He says if an adjournment was short, that would be acceptable, but a long adjournment would not be in anyone's interests.

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<sup>1</sup> Counsel advise there are 46,000 pages of discovered documents.

## **Discussion**

[12] I acknowledge the Crown's concerns, particularly those of the family of Mr Grath. However, in my view, the primary consideration here is fair trial rights. The application is prompted by the medical incapacity of not one of Mr Benbow's defence team, but two, and I take at face value their claims that they cannot provide Mr Benbow with a fair trial in those circumstances.

[13] In my view, preservation of a fair trial is the paramount consideration and must prevail over all others in these circumstances.

[14] I regret that I cannot give a new trial date at present. To me, it is more important that counsel know that they do not have to be ready for the 1 August trial date. However, I consider a new trial date must be allocated as a matter of priority, even if it means shifting other matters which have not experienced such delays. Counsel are also expected to prioritise this matter over other matters if that is required to accommodate an earlier rather than later fixture date, and that may mean substituting counsel on either the Crown or the defence team, if their other commitments mean they could not accommodate a proposed trial date.

[15] Accordingly, the application for adjournment is granted. The trial is to be allocated a new fixture date as a matter of priority, with every effort made to accommodate it later this year.

[16] Mr Hawes has sought that the decision to adjourn the trial is suppressed for a period of one week to enable him to advise all family members and witnesses closely tied to the case. I grant that application. The fact that the adjournment has been granted is suppressed until Friday 17 June 2022.

[17] I also order that details of counsels' health issues set out in the last four sentences of [4] above are suppressed for personal privacy reasons.

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