NOTE: PUBLICATION OF NAME, ADDRESS, OCCUPATION OR IDENTIFYING PARTICULARS OF COMPLAINANT PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011. SEE http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360350.html

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 39/2025
[2025] NZSC 169

BETWEEN	MELOTA METUALA Applicant
AND	THE KING Respondent

Court: Glazebrook, Ellen France and Miller JJ

Counsel: J E L Carruthers for Applicant
J E Mildenhall for Respondent

Judgment: 21 November 2025

JUDGMENT OF THE COURT

A The application for an extension of time to apply for leave to appeal is granted.

B The application for leave to appeal is dismissed.

REASONS

[1] Mr Metuala seeks leave to appeal his conviction for rape. He contends that his trial was unfair by reason of the trial Judge's interventions. He says that those interventions must have made clear to the jury that the Judge did not believe his account and thought his defence fanciful. He invites this Court to treat this case as an appropriate opportunity to consider when a trial judge may "enter the arena" in criminal trials.

[2] The application for leave to appeal is more than 12 months out of time,[1] but his former appellate counsel has taken responsibility for the delay. In the circumstances, we grant an extension of time.

[3] The Crown case was that the complainant encountered Mr Metuala outside a bar in the early hours of a Saturday morning. Both had been drinking. He followed her when she went looking for something to eat. Attempting to get away from him, she went to the police station, which was closed. He fled to a nearby service station. She then went to the same service station, thinking she could call a cab from there. It too was closed. He forced her to the ground on the forecourt, and was said to have strangled her.[2] She was able to use her phone to call the police while he was forcibly removing her clothing. The call was recorded. She was heard to scream for help and to say that she would "do it", meaning she offered to submit rather than endure further violence. The call was disconnected when he took her phone from her. He raped her. Parts of what happened were picked up on CCTV footage, albeit of poor quality. When he left her, she immediately went to the police, where she presented as extremely distressed. She had injuries, including to her neck, and torn clothing, all of which was consistent with her account.

[4] The defence case was that the complainant approached Mr Metuala, offered him cannabis and offered to pay him $40 for sex. He gave evidence to that effect.

[5] Judge Ruth relevantly intervened during the cross-examination of the complainant, the evidence in chief of Mr Metuala and the closing address of his trial counsel, Mr Saseve.

[6] There was one intervention of note during the complainant's cross-examination, at a time when it is clear from the transcript that she was very distressed. The Judge asked her whether, hypothetically, she would have agreed to sex on a service station forecourt. During Mr Metuala's evidence in chief the Judge intervened after counsel led an allegation that had not been put to the complainant. He observed that the jury might accept that counsel had forgotten to do so, but they

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1 See *Metuala v R* [2024] NZCA 50 (Collins, Brewer and Muir JJ) [CA judgment].
2 He was acquitted on the charge of strangulation.

might also think Mr Metuala was making it up as he went along. And at the end of Mr Metuala's evidence the Judge asked whether his contract as a seasonal worker allowed him to be drinking alcohol in town.

[7] The Judge interrupted counsel three times during his closing address. After counsel took the jury to expert evidence to the effect that the injuries to the complainant's neck may have been due to a virus rather than the alleged strangulation, the Judge required him to read out a further passage in which the expert witness said the complainant's inability to speak was consistent with her account of being attacked. The Judge next pointed out that counsel had not put to the complainant a proposition that counsel sought to draw from the CCTV footage. Lastly, he pointed out that to suggest that marks on the complainant's neck may have been caused in the throes of passion was inconsistent with Mr Metuala's evidence.

[8] In his summing up the Judge reviewed the evidence. At two points he noted that there were inconsistencies between Mr Metuala's police interview and his evidence, noting that these went to credibility.

[9] The Court of Appeal examined the interventions individually and collectively.[3] It focused on whether the trial was unfair by reason of the Judge's interventions, recognising that the appeal could not succeed if Mr Metuala was required to show that the interventions might have affected the outcome. It was not in dispute before the Court of Appeal that the Crown case was very strong.[4]

[10] The Court was troubled by some of the interventions.[5] It emphasised that it is rarely appropriate to intervene during a closing address; normally, any comments on the closing address would be made during summing up.[6] But when the interventions were examined in the context of the trial, the Judge did not convey an appearance of bias. Nor did he fail to sum up the case for the Crown and the defence in a balanced and clear way.[7]

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3 CA judgment, above n 1, at [32] and [46].
4 At [12].
5 At [35]–[38].
6 At [37]–[38].
7 At [41]–[43].

[11] We do not consider that it is necessary in this case to review the authorities on intervention by trial judges.

[12] Many of the interventions by the trial Judge summarised above were most inappropriate and the Court of Appeal was right to be troubled by them. It is not suggested, however, that they could have affected the outcome of the trial and therefore caused a miscarriage of justice. This is understandable as the Crown case was very strong. The Court of Appeal did not consider the interventions made the trial unfair. As trial fairness issues are always context specific, we are not satisfied that the matters raised by the applicant suggest the Court of Appeal's conclusion in that respect was wrong.

[13] For these reasons, the application for leave to appeal is dismissed.[8]

Solicitors:
Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent

[8] Senior Courts Act 2016, s 74(1).