



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

2 JULY 2026

MEDIA RELEASE

Te Hivaka v The King

(SC 108/2025)

Hearing in the Supreme Court 14 July 2026

CASE HISTORY SYNOPSIS

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court.

Background

This appeal concerns the correct approach to judicial directions on common purpose liability following the decision of the Supreme Court in *Burke v R* [2024] NZSC 37, [2024] 1 NZLR 1.

The appellant, Mr Te Hivaka, was at the scene when Benjamin McIntosh was shot and killed while sitting in his car in a West Auckland car park on 3 June 2022. Following a trial by jury, Mr Te Hivaka was found guilty of Mr McIntosh's murder as a secondary party under ss 167 and 66(2) of the Crimes Act 1961. On 31 May 2024 Mr Te Hivaka was sentenced to life imprisonment with a minimum period of imprisonment of 10 years.

At the time when Mr Te Hivaka's trial occurred, the law in respect of secondary party liability was in a state of uncertainty because the Supreme Court decision in *Burke v R* was still pending. The *Burke v R* judgment was issued on 22 April 2024. It held that in order to establish liability as a party under s 66(2) of the Crimes Act, the Crown had to prove that the defendant knew an assault of the type that actually occurred was a probable consequence of the prosecution of the parties' common purpose. In a case involving a weapon, that meant the jury had to be satisfied that the defendant knew that the principal party had a weapon in their possession at the time of the alleged offending. A judicial direction to that effect was required.

Court of Appeal decision

Mr Te Hivaka appealed his conviction to the Court of Appeal. He argued that the trial Judge had erred by failing to issue a weapons direction to the jury, and that the failure meant the jury would have been left in doubt as to the need to establish Mr Te Hivaka's knowledge of the weapon. On 8 September 2025 the Court of Appeal dismissed Mr Te Hivaka's appeal.

This appeal

On 5 March 2026 the Supreme Court granted leave to appeal. The approved question is whether the Court of Appeal was correct to dismiss Mr Te Hivaka's appeal against conviction.

Viewing of hearing

The courtroom is open to the public.

This hearing of the appeal will also be live-streamed. Details about access to the live-stream and the conditions of access will be posted on the [Courts of New Zealand website](#) shortly before the hearing. No recording is permitted.

The panel

The Hon Justice Miller	The Hon Justice Ellen France	The Rt Hon Chief Justice Winkelmann	The Hon Justice Williams	The Hon Justice Cooke
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Judges as seen from the public gallery

Counsel

- Julius Te Hivaka (Appellant): *R M Mansfield KC and J N Olsen*
- The King (Respondent): *M F Laracy and R G Buckman*

Sitting hours

The case is expected to take half a day. Court will begin at 10:00am and conclude (if the hearing does not finish earlier) at 4:00pm with adjournments taken from 11:30am to 11:45am and from 1:00pm to 2:15pm. There is no afternoon adjournment.

Enquiries

Any enquiries about the hearing should be directed via email to supremecourt@justice.govt.nz. While attending the hearing, enquiries can also be directed to the Court Registry, which is located outside the main courtroom in the Supreme Court foyer.

Contact person:

Sue Leaupepe, Supreme Court Registrar (04) 914 3613

Court of Appeal decision: [\[2025\] NZCA 451](#) (8 September 2025)

Supreme Court leave decision: [\[2026\] NZSC 11](#) (5 March 2026)