



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

5 FEBRUARY 2024

MEDIA RELEASE

KURU v THE KING

(SC 61/2023)

Hearing in the Supreme Court Monday 4 March 2024

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. The synopsis does not comprise part of the reasons for the judgment of the Court of Appeal. A direct link to the judgment is included at the end of this synopsis.

Background

In 2018 there was an ongoing confrontation between Black Power members and Mr Ratana, a senior member of the Mongrel Mob, over him living in Black Power territory. Eventually, several Black Power members agreed to a plan where they would confront Mr Ratana with firearms and other weapons in order to intimidate him and make him leave the area. Mr Ratana was shot and killed.

Mr Kuru, the Appellant, was one of several Black Power members charged with Mr Ratana's killing. Although Mr Kuru was not present when Mr Ratana was killed, he was president of the local chapter of the Black Power.

At trial in the High Court, the Crown agreed there was no direct evidence of Mr Kuru's involvement in either the formation or execution of the plan to intimidate Mr Ratana. The Crown also did not suggest the object of the plan was to physically harm, let alone kill, Mr Ratana. However, the Crown put forward evidence from the Police about the structure and chain of command of gangs in New Zealand, which the Crown relied upon to suggest to the jury that Mr Kuru—a person of innate authority amongst the Black Power members—must have approved of and encouraged the plan to intimidate Mr Ratana.

Ultimately, the jury found Mr Kuru guilty of the manslaughter of Mr Ratana on the basis of party liability, under s 66(2) of the Crimes Act 1961. That subsection provides:

Where 2 or more persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of the common purpose if the commission of that offence was known to be a probable consequence of the prosecution of the common purpose.

On 24 February 2022, Mr Kuru was sentenced to five years and two months' imprisonment.

Mr Kuru appealed his conviction to the Court of Appeal on three grounds:

- (a) The jury's verdict was unreasonable and not supported by the evidence;
- (b) The Judge was wrong to allow a police officer to testify about his experience and knowledge of the role of a gang president; and
- (c) The Judge misdirected the jury on the requirements to being a party to manslaughter.

Mr Kuru's appeal against conviction was dismissed by the Court of Appeal (by majority).

This appeal

Mr Kuru applied for leave to appeal the decision of the Court of Appeal. On 10 August 2023, the Supreme Court granted leave to appeal.

The approved question is whether the Court of Appeal was correct to dismiss the appeal. Although leave was granted on general terms, the Supreme Court has indicated that the following three questions can be ventilated in the appeal:

- (a) whether the Court of Appeal correctly assessed the reasonableness of the jury verdict, including whether the principles in *R v Owen* [2007] NZSC 102, [2008] 2 NZLR 37 were properly applied in this case;
- (b) whether the admission and use of the police officer's evidence in this case caused a miscarriage of justice, and—insofar as it is relevant to that question—whether police officers providing expert gang evidence should be treated the same way as any other expert; and
- (c) whether the jury was correctly directed on the requirements for party liability under s 66(2) of the Crimes Act.

Viewing of hearing

The courtroom is open to the public.

This hearing of the appeal will be livestreamed. 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 Williams	The Hon Justice Glazebrook	The Rt Hon Chief Justice Winkelmann	The Hon Justice Ellen France	The Hon Justice Kós
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Judges as seen from the public gallery

Counsel

- Damien Shane Kuru (Appellant): *C W J Stevenson and J H C Waugh*
- The King (Respondent): *F R J Sinclair and L Hay*

Sitting hours

Court will begin at 10:00am and conclude 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: [\[2023\] NZCA 150](#) (5 May 2023)

Supreme Court leave decision: [\[2023\] NZSC 102](#) (10 August 2023)

