

**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI**

**SC 55/2019  
[2019] NZSC 82**

BETWEEN                      PHILIP DEAN TAUEKI  
   Applicant  
  
AND                                THE QUEEN  
   Respondent

Court:                            Glazebrook, O'Regan and Ellen France JJ  
  
Counsel:                        Applicant in person  
   F R J Sinclair for Respondent  
  
Judgment:                      26 July 2019

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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**

**Introduction**

[1] Mr Taueki has been charged with three offences (two counts of threatening to kill and one of intimidation). The charges arise out of interactions on 17 May 2018 between Mr Taueki and the three complainants as he was leaving the Levin Court building after a Maori Land Court hearing. Mr Taueki sought to have the charges dismissed under s 147 of the Criminal Procedure Act 2011 on the ground that there was no case to answer. Judge Sygrove was satisfied on the basis of the evidence before the District Court that the application under s 147 was not made out and the application

was dismissed.<sup>1</sup> Mr Taueki now seeks leave to appeal directly to this Court from that decision.

[2] Mr Taueki says that there are exceptional circumstances in terms of s 75 of the Senior Courts Act 2016 to justify an appeal directly to this Court from the District Court decision.<sup>2</sup> In particular, Mr Taueki says a breach of the Treaty of Waitangi has been established which affects the ability of the Crown to rely on sovereignty in these circumstances. It is Mr Taueki's case that the Treaty breach arises from this Court's earlier decision determining that Mr Taueki was not in peaceable possession of ancestral land (in the area of Lake Horowhenua)<sup>3</sup> and to an earlier decision of the High Court ruling that the District Court was wrong to dismiss a charge of trespass in relation to buildings situated on Horowhenua Block XI.<sup>4</sup> On this basis, Mr Taueki wishes to argue that Judge Sygrove did not have jurisdiction to dismiss the s 147 application.

[3] In opposing the application for leave, the respondent submits there is no jurisdiction for the Court to hear Mr Taueki's appeal. The respondent relies in this respect on Court of Appeal decisions holding there is no jurisdiction for an appeal by a defendant under the relevant provision (s 296 of the Criminal Procedure Act) against a refusal to dismiss charges.<sup>5</sup> Section 296(3)(a) relevantly provides for appeals on questions of law in respect of "proceedings that relate to or follow the determination of the charge". The effect of the cases relied on is that those words do not extend to the decision to decline to dismiss a charge. Under s 71(a) of the Senior Courts Act, this Court can hear and determine appeals which are authorised by Part 6 of the Criminal Procedure Act 2011. The respondent submits that because there cannot be an appeal from the refusal to dismiss charges under s 147, there is no appeal under s 71 and the direct appeal under s 75 of the Senior Courts Act is similarly unavailable.

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<sup>1</sup> *New Zealand Police v Taueki* [2019] NZDC 12521.

<sup>2</sup> Previously s 14 of the Supreme Court Act 2003.

<sup>3</sup> *Taueki v R* [2013] NZSC 146, [2014] 1 NZLR 235.

<sup>4</sup> *New Zealand Police v Taueki* [2016] NZHC 3098.

<sup>5</sup> *D (CA716/2015) v R* [2016] NZCA 190 at [14]–[23]; and *Rowell v Commissioner of Inland Revenue* [2016] NZCA 471 at [22]–[24]. See also *Anderson v R* [2015] NZCA 518, [2016] 2 NZLR 321; *H (CA714/2017) v R* [2018] NZCA 34; and *[W] v R* [2019] NZSC 53 at [6]–[8].

## **Assessment**

[4] There is, as the respondent submits, a question about the Court's jurisdiction to hear the appeal. In any event, there are no exceptional circumstances. There is no reason why this Court needs to hear the matter especially given the nature of the particular proceeding in the District Court. We add that, if convicted, there is a right of appeal against conviction.

[5] The application for leave to appeal is accordingly dismissed.

Solicitors:  
Crown Law Office, Wellington for Respondent