

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

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

**CRI-2018-419-47
[2018] NZHC 1828**

BETWEEN MICHAEL RAYMOND MAIN
Applicant

AND NEW ZEALAND POLICE
Respondent

Hearing: 12 October 2018

Appearances: Applicant in person
S F Gilbert for Respondent

Judgment: 15 October 2018

JUDGMENT OF BREWER J

*This judgment was delivered by me on 15 October 2018 at 11:00 am
pursuant to Rule 11.5 High Court Rules.*

Registrar/Deputy Registrar

Solicitors:
Almao Douch (Hamilton) for Respondent

Introduction

[1] Mr Main seeks leave to bring a second appeal against findings by a Community Magistrate¹ that he is liable under infringement notices issued for the following offences:

- (a) Operates a vehicle without displaying current evidence of vehicle inspection;²
- (b) Failing to produce his driver licence for inspection without delay when required;³
- (c) Operating a vehicle displaying a registration that is not authorised to be affixed under Part 17 of the Act.⁴

Facts

[2] The prosecution case was that on 20 November 2017, Mr Main was driving a Holden Commodore motor vehicle on Heaphy Terrace, Hamilton. He was stopped by a police officer who had observed that the font of the car's registration plates did not conform to the standard form. The evidence of Constable Ross was:

- (a) The registration number plate on the vehicle, 033TTW, did not exist as a valid number when he searched for it using his mobility device;
- (b) The registration number plate that should have been on the car, based on the VIN number, was BNY883;
- (c) The Holden Commodore did not display a current warrant of fitness nor registration;

¹ *Police v Main* DC Hamilton CRI-2017-019-8526, 22 June 2018.

² Land Transport Act 1998, s 34(1)(b).

³ Land Transport Act 1998, s 31(1)(c).

⁴ Land Transport (Motor Vehicle Registration and Licensing) Regulations 2011, regs 85(1)(a) and 93.

- (d) The vehicle had previously been ‘green stickered’ or issued with a non-operational order by another police officer; and
- (e) The driver licence that Mr Main showed Constable Ross was not a valid New Zealand driver’s licence. It was a piece of paper with a name on it and other writing in “Māori”.

[3] Mr Main appealed the Community Magistrate’s decision to the District Court. Judge AS Menzies dismissed Mr Main’s appeal in a reserved judgment dated 3 August 2018.⁵ The Judge explained:

[9] I have now reviewed in greater detail the material provided by Mr Main both at the time of filing the appeal and at the hearing of the appeal. It is clear from that material and Mr Main’s oral submissions that the appeal is not directed towards the merits of the decision either in terms of the conviction or the fines imposed. Rather the entire focus of the appeal is a challenge to the jurisdiction of the Court over Mr Main. Given his position that there is no such jurisdiction, he argues the convictions and penalties are of no effect and he invites the Court to dismiss them accordingly.

[4] The grounds for Mr Main’s position could all be boiled down to the argument that the Court does not have jurisdiction over him because of his status as Māori. Judge Menzies applied the law binding on him as contained within statutes passed by the New Zealand Parliament, as well as decisions from the higher Courts. His Honour dismissed the appeal.

Application for leave

[5] Whether Mr Main can bring a second appeal in this Court depends upon whether he can satisfy s 237 of the Criminal Procedure Act 2011. This provides:

237 Right of appeal against determination of first appeal court

- (1) A convicted person may, with the leave of the second appeal court, appeal to that court against the determination of the person’s first appeal under this subpart.
- (2) The High Court or the Court of Appeal must not give leave for a second appeal under this subpart unless satisfied that—

⁵ *Main v Police* [2018] NZDC 15859.

- (a) the appeal involves a matter of general or public importance;
or
- (b) a miscarriage of justice may have occurred, or may occur
unless the appeal is heard

[6] Mr Main represented himself before me, as I understand he did before the Community Magistrate and before Judge Menzies. He brought with him to my Court a gentleman, whose name I did not catch but who was described as a Native Assessor present to ensure a proper record. I allowed the gentleman to be seated beside Mr Main and to act as a McKenzie Friend. It soon became apparent that Mr Main was almost entirely dependent on the verbal promptings of this gentleman for his submissions.

[7] I explained to Mr Main that this was not the hearing of his appeal to this Court but an application for leave to bring a second appeal. I explained the two matters he had to satisfy me on.

[8] On the first ground, whether there is a matter of general or public importance, it is clear Mr Main wishes to argue aspects of the contention that the laws of the Parliament of New Zealand do not bind Māori. Thrown into the mix are the familiar arguments of those who contend there is a difference between a person in the flesh and some other entity, which Mr Main largely referred to as a constructive trust. He said it is a matter of general or public importance that we do away with all the assumptions of the Court in this regard.

[9] On the need for a miscarriage of justice to be pointed to, Mr Main eventually clarified that s 4 of the Native Rights Act 1865 was not given effect to and this cascades into breaches of the New Zealand Bill of Rights Act.

[10] Mr Main then referred to a miscarriage of justice arising from a matter of non-disclosure. I had noted in my preliminary reading of the materials filed in the Court that an issue for the Community Magistrate and for Judge Menzies had been whether the prosecution had served on Mr Main the disclosure documents to which he was entitled under the law. I do not need to go into this matter any further because of the argument Mr Main advanced and to which I will refer shortly. I point out that I had

formed the preliminary view that Judge Menzies's discussion of this point seemed to be quite correct and that, despite initial difficulties, Mr Main had received disclosure. Further, on the arguments he advanced – which had nothing to do with the merits – there could be no miscarriage of justice arising from belated discovery.

[11] The point became moot in this context because Mr Main made it clear to me that the non-disclosure of which he complains, and on which he would bring his appeal if allowed, is that the prosecution did not disclose evidence of extinguishment of native title and rights over the area where the alleged offences occurred. This failure led to other grounds for miscarriage including breach of his right to a fair and impartial tribunal and an overall abuse of process.

[12] I attempted to call on Ms Gilbert for the Crown to respond to Mr Main's argument. However, Mr Main, at the prompting of the gentleman assisting him, said that Ms Gilbert represents a make-believe Crown, has no standing, and, due to the absence of disclosure, any statement by her would provide grounds for a further appeal. I told Mr Main I would not call on Ms Gilbert to speak, not because I accepted his points but because, having heard his arguments, I did not see that anything Ms Gilbert might say would assist me materially.

Decision

[13] Mr Main has not satisfied the prerequisites for leave to bring a second appeal. There is no matter of general or public importance. The law is well established that the Parliament of New Zealand makes laws which bind everybody in New Zealand. The Land Transport Act 1998 and the Land Transport (Motor Vehicle Registration and Licensing) Regulations 2011 apply to everyone in New Zealand regardless of race.

[14] There is no miscarriage of justice. The evidence establishing the infringements was straightforward and virtually uncontested. Mr Main's arguments all go to whether, because he is Māori, he is subject to the law of New Zealand.

[15] Leave to appeal is denied.

Brewer J