IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
KIRIKIRIROA ROHE

CIV-2018-419-228
[2018] NZHC 1948

UNDER	the Habeas Corpus Act 2001
IN THE MATTER	of an application for a writ of habeas corpus
BETWEEN	MOKO PUNA TURNER Applicant
AND	CHIEF EXECUTIVE OF THE DEPARTMENT OF CORRECTIONS Respondent

Hearing: 31 July 2018

Counsel: RL Mann for respondent

Appearance: M Turner, by his representative M Main

Judgment: 1 August 2018

JUDGMENT OF FITZGERALD J
[As to application for writ of habeas corpus]

This judgment was delivered by me on 1 August 2018 at 3 pm,
pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date……

Solicitors: Almao Douch, Hamilton

To: M Main, Tahuna

[1] On the afternoon of Friday 27 July 2018, Mr Turner (by way of his stated "representative native assessor" Mr Main) filed a statement of claim in the High Court at Hamilton in support of a writ of habeas corpus. As I was at that time in Hamilton presiding over a criminal jury trial, the claim was referred to me for directions.

[2] As I set out in my minute dated 27 July 2018, while the document on its face is difficult to discern, I proceeded on the basis that it ought to be treated as an originating application for a writ of habeas corpus. I accordingly directed the Registry to accept it for filing and to schedule an *inter partes* hearing. Given the provisions of s 9(3) of the Habeas Corpus Act 2001 ("Act"), I directed that the hearing be held on or prior to Wednesday 1 August 2018. I also directed that it could take place by way of AVL, if required. As matters have transpired, and with Mr Main's consent, the hearing took place before me yesterday by telephone conference. Mr Main appeared on behalf of the applicant and Ms Mann appeared on behalf of the respondent.

[3] Mr Main confirmed the applicant is currently detained at the Springhill Corrections Facility. As such, it is the Chief Executive of the Department of Corrections who is responsible for his current detention, and who has power to cease his detention, if so ordered. I accordingly make orders pursuant to High Court Rules 4.56(1)(a) and (b) that:

(a) the three named respondents named in the statement of claim as filed are struck out as respondents; and

(b) the Chief Executive of the Department of Corrections is named as the sole respondent.

[4] The applicant is detained pursuant to a warrant to detain issued by Judge Cocurullo on 26 July 2018 (a copy of which has been produced to me). It is presumably that detention which triggered the filing of the application for habeas corpus the following day.

[5] The applicant's detention followed a Judge-alone hearing in the Huntly District Court, as a result of which the applicant was convicted in respect of one charge of

assault with intent to injure. He was remanded in custody pending sentence. I am informed by counsel for the respondent that sentencing is due to take place on 14 September 2018. That date is also recorded in the warrant.

[6] The papers filed on behalf of the applicant are difficult to follow. As I stated in my minute on 27 July 2018:

> [3] The document itself, and who precisely the applicant is, is unclear. The document appears to assert native customary title but in relation to what is not evident on the face of the document. It may be in relation to the prosecution of the applicant, but in relation to what and when is, as I say, unclear.
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> [4] The document goes on to state that the first, second and third respondents shall immediately release the applicant from wrongful custody and illegal detention. The document also appears to seek some form of mandatory injunctive relief against New Zealand settlers, Parliament, all responsible Chief Executive Ministers, all Legislative Judicial branches of the Government, all New Zealand Police Force employees and Police Prosecution agents and Judges to immediately dismiss all charges and cease and desist any form of proceedings, presumably in the context of the applicant. The document also states that such parties are liable and are "now served as an invoice" in a total sum of $10,000,000, made up of a variety of sums, including $1,000,000 (search and legal service), $3,000,000 (legal costs) and $5,000,000 (unauthorised invasion of native proprietary rights). The document also purports to add daily interest for non-payment of $1,000,000.

[7] In the telephone conference yesterday, I asked Mr Main to clarify and confirm the basis for the submission that the applicant's detention is unlawful. Mr Main clarified that the essence of the applicant's position is that the District Court at Huntly has not produced an instrument evidencing extinguishment of native customary title, to either the land at which the alleged incident took place (a petrol station at or near Waitomo) or the Huntly District Court itself. Mr Main explained that because no such evidence extinguishing native customary title had been produced, the applicant was effectively on his own land when the alleged offending took place.

[8] Mr Main also explained that, as stated in the applicant's affidavit accompanying the statement of claim, the applicant does not consider himself a New Zealand citizen, but is part of a Māori incorporation. As a result, and given the lack of disclosure of an instrument evidencing extinguishment of native title, Mr Main's submission is that the District Court had no jurisdiction to detain the applicant.

[9] Having considered the contents of the documents filed, and the points raised by Mr Main in the telephone conference, I have reached the conclusion that the application for a writ of habeas corpus is without merit.

[10] In accordance with s 14(1) of the Act, the respondent is to establish the lawfulness of a detention. Ms Mann produced a copy of the warrant to detain the applicant in advance of the telephone conference. This Court has already held that a warrant to detain a defendant is proof of the existence of a Court order for his detention.[1] The warrant was issued pursuant to s 168(4) of the Criminal Procedure Act 2011 and in compliance with r 3.5 of the Criminal Procedure Rules 2012. As Randerson J observed in *Barrett v Police,* there is an unbroken chain of constitutional authority to support the validity of statutes passed by the New Zealand Parliament.[2] That includes the Criminal Procedure Act 2011, pursuant to which the court order, and the warrant, was issued. No issue has been raised as to the validity of the warrant itself.

[11] Further, if the proposition advanced by Mr Main were to be accepted, courts would regularly be required to produce evidence of extinguishment of customary title at the place where an alleged offence has been committed, as well as on the land upon which the court sits, before a defendant could lawfully be convicted and remanded in custody. That proposition need only be stated to recognise its fallacy.

[12] In addition, and as Ms Mann submitted:

(a) Section 14(1A) of the Act provides that the High Court may refuse an application for a writ of habeas corpus if the Court is satisfied that such an application is not the appropriate procedure for considering the allegations made by the applicant. In this case, the appropriate procedure would be an appeal against the District Court's refusal to grant bail pending sentence.

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1 *R v Fisher* HC Auckland T236/95, 4 October 1995.
2 *Barrett v Police* HC Hamilton CRI-2003-419-64, 14 June 2004 at [7].

(b) Further, s 14(2)(b) of the Act expressly provides that that subsection does not entitle a Judge to call into question a ruling as to bail by a court of competent jurisdiction in any event.

[13] Finally, the applicant's suggestion that he is not a citizen of New Zealand and is therefore not bound by its laws is unsound. All persons are required to comply with laws passed by Parliament and the courts are similarly obliged.[3]

[14] For all of the above reasons, I am satisfied there is lawful authority for the applicant's continued detention.

[15] The application filed on his behalf and dated 27 July 2018 is accordingly dismissed.

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Fitzgerald J

[3] See the observations of Mander J in *Brooker v Police* [2017] NZHC 2658 at [13].