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IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

M.31/84

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BETWEEN TE RINGA MANGU MIHAKA

Appellant

AND JUDGE B. J. KERR

Respondent

Hearing 4 April 1984

Counsel Appellant In Person
K. G. Stone for the Respondent

ORAL JUDGMENT OF ONGLEY J

On 8 December 1983 Te Ringa Mangu Mihaka was sentenced in the District Court at Wellington to 10 days imprisonment for contempt of Court. He has served the term of imprisonment, against which he does not now appeal but he appeals against the conviction itself as he is entitled to do.

The circumstances giving rise to the conviction arose from his attendance at Court in response to a summons issued under the Summary Proceedings Act 1956 because of his failure to pay fines imposed in the District Court upon two earlier convictions. When he responded to the summons the Judge required him to enter the dock which he refused to do. The matter was stood down until the end of the Judge's list when it was called again. The appellant then again refused to enter the

dock. In the meantime he had endeavoured to persuade the Registrar to withdraw his case from that list and bring it before a different Judge which, rightly, the Registrar refused to do. On his second appearance in the courtroom the presiding Judge informed the appellant that he had arranged for the case to be called before another Judge on the same day and remanded him in custody until that hearing could be held. It was then that the appellant used the words which the Judge held amounted to contempt of Court. The Judge recorded in his later notes that he informed the appellant that he would be dealt with for contempt. The appellant has told me this morning that he did not hear that advice and was unaware when taken to the cells that he was to be so charged. He was in custody upon the Judge's earlier direction anyway. He was made aware while in the cells that he was to be dealt with in contempt proceedings and was shown the words he had allegedly used. He disagrees in detail with the quoted words but agrees that the sense of what he said was much the same as they bear. Later he was brought back into Court and asked to enter the dock but again he refused to do so. He used further words which the Judge considered to be obscene and insulting. I am not informed what they were except by the appellant himself who does not appear to think that they were as bad as the earlier ones. Because of the appellant's attitude towards him the Judge dealt with the question of contempt in his absence and imposed a sentence of 10 days imprisonment. The sentence

was imposed under Section 206 of the Summary Proceedings Act 1956 which as amended by the Summary Proceedings Amendment Act 1982 reads as follows:

> "If any person -
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> (a) Wilfully insults a District Court Judge or Justice or any witness or any officer of the Court during his sitting or attendance in Court, or in going to or returning from the Court; or
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> (b) Wilfully interrupts the proceedings of a Court or otherwise misbehaves in Court; or
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> (c) Wilfully and without lawful excuse disobeys any order or direction of the Court in the course of the hearing of any proceedings, any constable or officer of the Court, with or without the assistance of any other person, may, by order of the District Court Judge or Justice, take the offender into custody and detain him until the rising of the Court, and the District Court Judge or Justice may, if he thinks fit, by warrant under his hand, order that the offender be committed to prison for any period not exceeding 3 months, or order the offender to pay a fine not exceeding $1,000 for each offence."

The maximum penalty was increased in 1982 from 10 days to 3 months imprisonment and from a $150.00 to a $1,000.00 fine. The substance of the contempt was the use of the words in the Court and nothing else. The Judge made it clear in his remarks on sentencing that the failure to go into the dock would not of itself have attracted a penalty of imprisonment.

The Judge's approach to the principle upon which the penalty for contempt in the face of the Court was imposed is correct. He was guided by the statement of Richmond P. in Solicitor-General v Radio Avon 1978 1 N.Z.L.R. p.225 at p.229 which is to this effect:

> "No one can question the extreme public importance of preserving an efficient and impartial system of justice in today's society which appears to be subject to growing dangers of direct actions in its various forms. It is to that end and to that end alone that the law of contempt exists."

The stated ground for this appeal is a general one designated in the Notice of Appeal as "maladministration of justice". Under this head the appellant addressed me on a number of matters. Over a long period of years in his numerous court appearances he has objected to going voluntarily into the dock when charged. He says that his objection is not "categorical" and that if the Judge orders him to be placed in the dock he recognises that that has to be accepted. On some earlier occasions it appears he has been penalised for contempt in connection with this attitude.

It seems that his remarks on this day were precipitated not by the dock issue but by the direction that he remain in custody until his case was heard. The appellant was not unknown to the Judge because of earlier appearances before him and clearly he has built up a strong antipathy for the Judge which he endeavoured to justify in this Court by recounting a number of earlier encounters with him. If these matters were substantiated the appellant would have grounds for alleging bias on the

part of the Judge which might preclude the Judge deciding on matters in which he was involved or for challenging any decision that he might make in relation to the appellant. I have no intention of exploring the merit of any such allegation because they are irrelevant to the matter of the appeal with which I am required to deal.

Whether or not the Judge acted correctly in remanding the appellant in custody until his case could be heard is not in issue either. Right or wrong it could not excuse the words used by the appellant to him. I am afraid that at this point the appellant allowed his personal antipathy to dictate his conduct. He says so himself. He said today that at this point he had regard to what he regarded as the Judge's personal qualities as distinct from his office as a Judge. The Courts cannot allow that. It is the very thing that the statute aims at preventing. If it were permitted the administration of justice would be well nigh impossible. I do not think that the Judge had any option but to invoke his powers to sentence for contempt. So long as he was sitting in his Court some stringent action was called for so that he might retain control of it.

The words themselves are clearly contemptuous and they were used in the face of the Court so that in my view proceedings for contempt were appropriate.

The appeal against conviction is therefore dismissed.

Solicitors:

Crown Law Office, Wellington, for the Respondent