IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M.1436/84

BETWEEN THE AUCKLAND CITY COUNCIL

Appellant

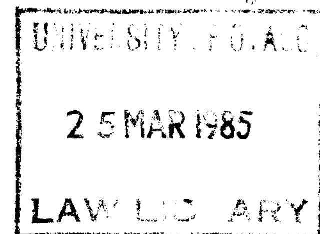
AND IAN GERARD BALL

Respondent

Hearing: 17th December 1984

Counsel: Katz for Appellant
~~Long~~ for Respondent
R.D. Jones

Judgment: 19 DEC 1984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JUDGMENT OF SINCLAIR, J.

The Respondent laid a private information against the Appellant alleging an offence against the provisions of the Health Act 1956. The information alleged that the City Council was a person by whose default a nuisance continued on land at 29 Rutland Street, Auckland, in that the land was in such a state as to be offensive.

A plea of not guilty was entered on the 3rd July, 1984 that being for the express purpose, as I understand it, for contending that the "hearing" of the information had commenced by the entry of that plea.

Subsequently the City Council applied to the Court for an order that the Informant should provide particulars as to the respects in which it was alleged that the land was in an offensive state and also requiring the Informant to elect which of the provisions of S.29 of the Health Act 1956 were relied upon by the Informant in support of its case, and requesting

that the information be amended accordingly. That application came before the District Court on the 4th September, 1984 and both applications were refused. A question now arises as to whether or not this Court has any jurisdiction to entertain the appeal.

The affidavit filed in support of the motion in the District Court showed that while the Auckland City Council was the occupier of the land in question there had been certain buildings erected on the land which had been demolished and the demolition was undertaken by an independent contractor, Ghia Demolition Limited. None of the work was undertaken by City Council employees. Subsequently the demolition company went into liquidation and it was as a result, apparently, of the rubble being left on the land, that the information was issued. After the issue of the information the solicitors for the City Council sought to be given particulars and by a letter dated 29th June, 1984 the solicitors for the Informant alleged that the offensiveness was related to the pile of demolition rubble upon the land. I simply observe that per se rubble would not be offensive and if ever there was a case which required particulars to be supplied it seems to me that this is such a case. I am really at a loss to understand why that particular application was declined in the District Court.

The City Council is entitled to know precisely in what respects it is alleged that the heap of rubble is offensive. If the matter went to trial as it now stands, one could well understand that if evidence was given which particularised the alleged offensiveness then the Court may well be met

with an application for an adjournment on the basis that the Council has been prejudiced in preparing its defence by not having adequate notice of what was being alleged. However, I have come to the conclusion that in respect of the application which was before the District Court, and which was decided on 4th September 1984, this Court has no jurisdiction to entertain the appeal. The right of appeal is conferred by S.115 of the Summary Proceedings Act and s-s.(1) of that section reads as follows:

> "(1) Except as expressly provided by this Act or by any other enactment, where on the determination by a District Court of any information or complaint any defendant is convicted or any order is made other than for the payment of costs on the dismissal of the information or complaint, or where any order for the estreat of a bond is made by any such Court, the person convicted or against whom any such order is made may appeal to the High Court."

That particular provision has been before the Court on a number of occasions and I refer to the decision in Tuohy v. Police (1959) N.Z.L.R. 865 where it was held that the words

> "on the determination....of any information or complaint must be interpreted as meaning 'in determining an information or complaint' and that accordingly the order referred to in S.115(1) must be one made 'in the course of determining an information or complaint.' "

In Police v. Norman (1975)1 N.Z.L.R. 391, there was a direct challenge to the decision in Tuohy's case, but the Court of Appeal upheld that decision. Both of those cases were followed by Vautier, J. in Delaney v. Police (1982) N.Z.L.R. 649 and at page 650 the Judge had this to say:

> "The refusal of the application here made for dismissal pursuant to S.195 of the Transport Act clearly had no connection at all, in my view,

"with the judicial process of deciding the information. The learned Magistrate was a long way from embarking in the slightest degree upon that function; he had not heard any evidence at all directed to the actual facts of the case upon which the information was based and was doing nothing at all towards deciding the information one way or the other."

That is precisely the situation in the instant case. The actual hearing had not been embarked upon at all and the Court was dealing with an interlocutory application for particulars. This did not require the hearing of the information as such to be commenced and the Court was merely dealing with a procedural aspect of the case wherein the Defendant sought to be apprised more fully of what was involved in the alleged offence.

Some assistance can be obtained also from the decision in Police v. S. (1977)1 N.Z.L.R. 1 where, after reviewing a number of authorities, the Court said:

"In the light of these authorities it is clear that in order to be appealable an order made by a Magistrate must be so closely linked with the process of deciding the information that it can be properly described as an order made in the course or process of so doing."

To my mind an application for particulars does not fall within the ambit of that statement.

But further assistance can be obtained from the decision in Police v. S. as it is clear the Court of Appeal recognised that there were certain orders which would not give rise to a right of appeal. At page 5 the following appears:

"We should add our opinion that it is important in the public interest that the Supreme Court should have a supervisory control over this

> "important discretion conferred by s 46(1) of the Criminal Justice Act 1954. The control will be limited by the principles governing appeals from the exercise of a discretion conferred on a court at first instance. But, nevertheless, it can and should serve the useful purpose of maintaining reasonable uniformity in the exercise of the discretion in the Magistrates' Courts concerning the suppression of names. The fact that the right of appeal from a refusal to suppress the name of an accused person will arise only on the determination of an information may give rise to some anomalous situations. It could happen, for example, that a request for suppresion of name at the outset of the proceedings might be refused. And the right of appeal will not extend to an application made on behalf of a witness. The practical value of the right of appeal will, of course, depend to some extent on the readiness of magistrates to grant interim orders of suppression. However, the possibility of anomalies and limitations should not deprive a convicted person of a right to appeal in such circumstances as existed in the present case. "

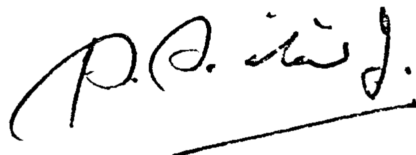
In that particular case the Appellant had pleaded guilty and, of course, on pleading guilty a conviction was entered and the information had been determined. The sentence to be passed consequent upon the determination of the information was another and separate procedural step which thus gave rise to the right of appeal when the District Court refused to grant a suppression of name. But as the Court of Appeal pointed out, anomalous situations may well arise if, before the determination of an information, suppression is refused, whereas after determination if suppression is refused it can be allowed on appeal.

Having regard to the nature of the application made and the point of time at which it was made, I am satisfied this Court has no jurisdiction to entertain this appeal and accordingly it will be dismissed.

In arriving at that decision I am conscious of the fact that it may appear to run counter to the decision of Chilwell, J. in Jackson v. Police, M.631/82, Auckland Registry, 16th July 1982, but the decision in that case was in relation to an amendment of the information and Chilwell, J. himself pointed out that the situation was different from that in Delaney's case because in Jackson's case the Judge had made an order which in his view was linked with the process of deciding the information. To my mind Jackson's case stands in a different category from the present case.

So far as the costs are concerned, I am of the view, as I have stated earlier, that the Appellant was entitled to the particulars it sought and, indeed, I now invite the Appellant, if the particulars are not forthcoming from the Respondent, to apply again to the District Court for those particulars in the hope that they will now, in the light of this judgment, be ordered.

In all the circumstances it seems to me that this is an appropriate case to allow the costs of this appeal to fall where they lie.



SOLICITORS:

Butler, White & Hanna, Auckland for Appellant
Meredith, Connell & Co., Auckland for Respondent

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BETWEEN THE AUCKLAND CITY COUNCIL

Appellant

AND IAN GERARD BALL

Respondent

Reserved decision delivered by me this 19th day of December 1984 at 10.30

C.A. MORTIMER
Deputy Registrar

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JUDGMENT OF SINCLAIR, J.

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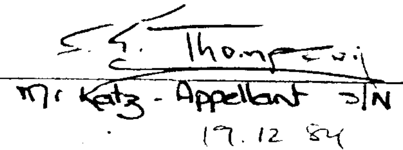
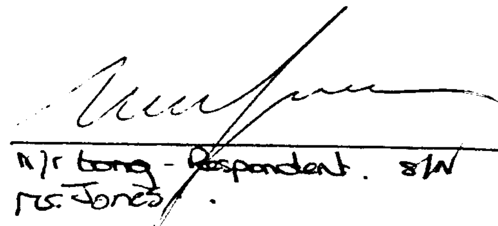


Mr Katz - Appellant S/N
19.12.84



Mr Long - Respondent. S/N
Ms Jones