IN THE HIGH COURT OF THE COOK ISLANDS **JPA NO. 1/19**
HELD AT RAROTONGA
(CRIMINAL DIVISION)

A.B. & C.D.
(PAUL ALLSWORTH & TEREAPII NGATAE TORU)

v

POLICE

Date: 23 May 2019

Counsel: Ms K Bell for the Crown
Mr N George for the Defendant

JUDGMENT
OF THE HONOURABLE JUSTICE DAME JUDITH POTTER

[9:16:18]

[1] The appellants appeal a decision of his Worship John Whitta refusing the grant of permanent name suppression.

[2] Justice Whitta's decision is dated 18 April 2019. Essentially on the grounds of public interest he declined permanent name suppression but extended interim suppression of name until the hearing of this appeal.

Background facts

[3] The background may be briefly stated for the purposes of this appeal. The two appellants were not previously known to each other.

[4] In the early hours of 24 February 2019 after a night out and partying at the house of the appellant, Ms Toru, they were involved in an altercation. Consequent upon that altercation, Ms Toru was charged with carrying an offensive weapon in a public area and Mr Allsworth was charged with assaulting a female.

[5] On 25 February 2019 the appellants wrote a joint letter to police regarding a mutual agreement they had reached. They agreed that the charges each against the other should be withdrawn because they had amicably reconciled. They apologised for their involvement in the matter.

[6] The charges were withdrawn by the police and Justice Whitta granted the withdrawals of those charges. However, as I have recorded, the application for name suppression by both appellants was declined.

Evidence

[7] The Court has jurisdiction to receive further evidence on appeal. The appellants have filed affidavits and I have read them in detail. I receive that evidence and I pay due regard to it. But I have to say, what is stated in the affidavits adds little to the facts and material already before the Court.

[8] The affidavits certainly confirm that the appellants are persons of respect and, particularly in the case of Mr Allsworth, of distinction and very high standing, he being a title holder and traditional leader in the local community.

Submissions

[9] The grounds of appeal, as stated in the Notice of Appeal and confirmed in written submissions, have been the subject of further submission by Mr George this morning. The points he emphasises are that neither of these appellants has any previous criminal convictions. They are of high standing and reputable individuals who enjoy the respect of the community and I have referred in particular to the position of Mr Allsworth, which Mr George emphasised in oral submissions.

[10] Mr George submitted that publication of their names when they had been acquitted of the charges is the equivalent of punishment for merely appearing in Court. He submitted that the whole event has become trifling and unworthy of public interest, and that the damage to the appellants' reputations by publication far outweighs any real public interest in the matter. He referred to the embarrassment for the appellants which would follow publication.

[11] The Crown submitted that while withdrawal of a charge lessens the public interest consideration, that matter on its own does not override the presumption of publication. Something more needs to be present. The Crown referred to the leading Cook Islands case in this matter, *Police v Quarter*[1], where it is stated that the public has an interest in acquittals as well. The Crown noted that withdrawal of these charges had nothing to do with the merits of the case. In other words, they were not withdrawn because the police could not adduce evidence in support, but were withdrawn on the agreement of the parties.

[12] The Crown referred an extract from the judgment of this Court in *Police v Quarter:*

> "As it is usual for distress, embarrassment and adverse personal and financial consequences to attend criminal proceedings, some damage out of the ordinary and disproportionate to the public interest in open justice in a particular case is required to displace the presumption in favour of the reporting."

[13] I also note from *Quarter*, at [43]:

> The Judge must identify and weigh the interests, public and private, which are relevant in a particular case. It will be necessary to confront the principle of open justice and on what basis it should yield...
>
> ...the balance must come down clearly in favour of suppression if the prima facie presumption in favour of open reporting is overcome.

[14] In recording those remarks in the *Quarter* judgment, the Court was quoting from the judgment of the New Zealand Court of Appeal in *Lewis v Wilson & Horton Limited*[2].

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[1] *Police v Quarter* (CR 137/2009), 8 April 2011, Hugh Williams J

[2] *Lewis v Wilson & Horton Limited* (CA 131/09), 29 August 2000

Decision

[15] The issue on appeal is, did the Justice of the Peace wrongly exercise the discretion vested in the Court to prohibit publication of the names of the appellants. I am satisfied he did not. None of the reasons advanced by the appellants outweigh the public interest in open justice.

[16] The appeal is dismissed.

Potter, J

Judith Potter, J