

**IN THE DISTRICT COURT  
AT WHANGAREI**

**I TE KŌTI-Ā-ROHE  
KI WHANGĀREI-TERENGA-PARĀOA**

**CIV-2021-088-000496  
[2022] NZDC 19541**

**BETWEEN**

**KEVIN JOHN TITO  
TUI-DOROTHY TITO  
Applicants**

**AND**

**NEW ZEALAND POLICE  
Respondent**

Hearing: On the Papers

Appearances: No appearances for Applicants  
J Golightly for the Respondent

Judgment: 14 October 2022

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**COSTS JUDGMENT OF JUDGE D J CLARK**

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[1] Following my judgment of 9 September 2022, I reserved the issue of costs. I indicated that costs should perhaps lie where they fall. Ms Golightly has filed submissions on behalf of the New Zealand Police and seeks costs on a 2B basis. Mr and Mrs Tito have been contacted by the Registry and they have advised they do not wish to make any submissions with respect to costs.

**The District Courts Costs Regime**

[2] The exercise for the Courts discretion on questions of costs is set out in Rule 14.1 of the District Court Rules (the Rules):

**14.1 Costs at discretion of court**

- (1) All matters are at the discretion of the court if they relate to costs—
  - (a) of a proceeding; or

- (b) incidental to a proceeding; or
  - (c) of a step in a proceeding.
- (2) Rules 14.2 to 14.10 are subject to subclause (1).
- (3) The provisions of any Act override subclauses (1) and (2).

[3] The relevant principles for the determination of costs in these proceedings are:

#### **14.2 Principles applying to determination of costs**

- (1) The following general principles apply to the determination of costs:
- (a) the party who fails with respect to a proceeding or an interlocutory application should pay costs to the party who succeeds:
  - (b) an award of costs should reflect the complexity and significance of the proceeding:
  - (c) costs should be assessed by applying the appropriate daily recovery rate to the time considered reasonable for each step reasonably required in relation to the proceeding or interlocutory application:
  - (d) an appropriate daily recovery rate should normally be two-thirds of the daily rate considered reasonable in relation to the proceeding or interlocutory application:
  - (e) what is an appropriate daily recovery rate and what is a reasonable time should not depend on the skill or experience of the solicitor or counsel involved or on the time actually spent by the solicitor or counsel involved or on the costs actually incurred by the party claiming costs:
  - (f) an award of costs should not exceed the costs incurred by the party claiming costs:
  - (g) so far as possible the determination of costs should be predictable and expeditious.

#### **14.5 Determination of reasonable time**

- (1) For the purposes of rule 14.2(1)(c) reasonable time for a step in a proceeding is—
- (a) the time specified for it in Schedule 4; or
  - (b) a time determined by analogy with that schedule, if Schedule 4 does not apply; or
  - (c) the time assessed as likely to be required for the particular step, if no analogy can usefully be made.

- (2) A determination of what is a reasonable time for a step in a proceeding under subclause (1) must be made by reference—
- (a) to band A, if a comparatively small amount of time for the particular step is considered reasonable; or
  - (b) to band B, if a normal amount of time for the particular step is considered reasonable; or
  - (c) to band C, if a comparatively large amount of time is considered reasonable.

#### **14.7 Refusal of, or reduction in, costs**

Despite rules 14.2 to 14.5, the court may refuse to make an order for costs or may reduce the costs otherwise payable under those rules if—

- (a) the nature of the proceeding or the step in a proceeding was such that the time required by the party claiming costs would have been substantially less than the time allocated under band A; or
- (b) the property or interests at stake in the proceeding were of exceptionally low value; or
- (c) the issues at stake were of little significance; or
- (d) although the party claiming costs has succeeded overall, that party has failed in relation to a cause of action or issue that significantly increased the costs of the party opposing costs; or
- (e) the party claiming costs has contributed unnecessarily to the time or expense of the proceeding or step in the proceeding by—
  - (i) failing to comply with these rules or a direction of the court; or
  - (ii) taking or pursuing an unnecessary step or an argument that lacks merit; or
  - (iii) failing, without reasonable justification, to admit facts, evidence, or documents or accept a legal argument; or
  - (iv) failing, without reasonable justification, to comply with an order for discovery, a notice for further particulars, a notice for interrogatories, or any other similar requirement under these rules; or
  - (v) failing, without reasonable justification, to accept an offer of settlement, whether in the form of an offer

under rule 14.10 or some other offer to settle or dispose of the proceeding; or

- (f) some other reason exists that justifies the court refusing costs or reducing costs despite the principle that the determination of costs should be predictable and expeditious.

### **Ms Golightly's submissions**

[4] My initial view as to why costs should lie where they fall is whilst I dismissed Mr and Mrs Tito's appeal, I was of the view that their appeal did not totally lack merit, they were entitled to be heard in respect of the appeal and, they had an honest belief they were entitled to retain their firearms licences. All of these factors fall into consideration when exercising my discretion whether to award costs under Rule 14.1 of the Rules.

[5] Ms Golightly's submissions focus on recent changes to the Arms Act 1983 (the Act). The manner in which the police review and determine whether a person is entitled to hold a licence has been centralised with an intermediary step introduced to consider the initial decision of the Police. This step provides a robust review process and consistency across the country, with the effect an appeal may not be necessary. The right to appeal however remains.<sup>1</sup>

[6] Ms Golightly states that as part of this new regime, all recent cases in the District Court and High Court which determine appeals under the Act will be considered and will be used to develop 'best practice' when making decisions regarding reviews.

[7] Cases such as this one which determine costs on appeal will also fall into consideration in terms of the development of best practice. Ms Golightly's submission is a decision which allows costs to lie where they fall will not have a deterrent effect on meritless appeals or how the Police might adopt an approach to an appeal in terms of defending the appeal (at not insignificant cost to the taxpayer) or seeking a negotiated outcome.

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<sup>1</sup> *Foot v New Zealand Police* [2022] NZHC 1670, at [27] and [28].

[8] Ms Golightly submits then costs should follow the event and that I should award 2B costs. The costs sought amount to \$17,667.50. Some of the steps claimed are based on the proceeding being a full trial.

### **Discussion**

[9] Whilst I accept this case and others may have a bearing on the development of the best practice approach for the Police, ultimately the first principle in relation to an award of costs is set out in Rule 14.1. Rules 14.2 to 14.10 of the Act are subject to this Rule. What that means is all decisions relating to costs are ultimately an exercise of a discretion which considers the merits of the arguments, conduct of parties and outcome of a particular proceeding. I disagree then an adverse cost award will have or, should have an impact on how an appeal should be approached. Each appeal will need to be dealt with on its individual merits.

[10] Notwithstanding the above, I accept the Police as the successful party have a legitimate claim for costs. Balanced against this are the matters I have set out in paragraph [4] above. I also note Mr and Mrs Tito have chosen not to make submissions regarding costs and no reasons have been provided why this is so.

[11] In terms of the costs sought, I do not accept costs should be awarded based on a full trial. Given the nature of the hearing (affidavit evidence with cross examination and submissions) the appropriate mode of trial would be equivalent to a simplified trial.

[12] The procedural steps taken should also reflect the work needed and the complexity of the same. Accordingly, a variable scale and band is appropriate for the different steps.

[13] I therefore make the following award for costs based on Ms Golightly's table in her submissions:

- (a) For items numbered 6, 9.8 and 9.9 costs on a 1B basis;
- (b) For items numbered 9.12 and 18.1 costs on a 2A basis;

- (c) For item numbered 17.1 the item should be replaced with item 14 from Schedule 4 of the Rules and costs are awarded on a 2A basis.
- (d) Disbursements are also awarded as fixed by the Registrar.

Signed at Auckland this 14<sup>th</sup> day of October 2022 at 11.45 am

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Judge D J Clark

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 14/10/2022