

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CRI 2015-092-6886
[2017] NZHC 63**

THE QUEEN

v

FEROZ ALI AND JAFAR KURISI

Hearing: (on the paper)

Counsel: L Clancy and J M Pridgeon
P Broad for Mr Ali
M S Sahu Khan for Mr Kurisi

Judgment: 3 February 2017

**SUPPLEMENTARY ORDER OF HEATH J
[VARIATION TO REPARATION ORDER IN RESPECT OF FEROZ ALI]**

*This judgment was delivered by me on 3 February 2017 at 9.00am pursuant to Rule
11.5 of the High Court Rules*

Registrar/Deputy Registrar

Solicitors:
Crown Solicitor, Manukau
Counsel:
P Broad, Manukau
M S Sahu Khan, Auckland

Variation of reparation order

[1] On 15 December 2016, I sentenced Mr Ali on charges involving trafficking of human beings, exploitation of workers and Immigration Act offences. The end effective end sentence imposed was one of nine years and six months imprisonment. An order for reparation was also made.¹

[2] Since sentence was passed, counsel for the Crown has drawn my attention to an error in the schedule of reparation payments with which I was provided for the purpose of sentencing Mr Ali. The error relates to the inclusion of a reparation payment for a complainant who did not ultimately give evidence at trial and in respect of whom no conviction has been entered. That makes the correct amount of reparation to be ordered against Mr Ali \$25,487, in respect of those persons and the losses identified in the schedule attached to counsel's memorandum of 31 January 2017.

[3] Mr Broad, for Mr Ali, has been asked for any submissions in respect of this change. No opposition is offered.

[4] I vary the reparation order that I made on 15 December 2016 by substituting the sum of \$NZD25,487 to be paid on the basis that no payment is to be made to that complainant, and otherwise as outlined in my sentencing notes.² The Registrar may now act on the distribution of the sum of \$FJD14,000 currently held in a bank account in Fiji by Immigration New Zealand as part payment of the reparation order.

Inspection of Court file

[5] An application has been made to access the Court file in respect of the criminal proceedings against both Mr Ali and Mr Kurisi.³ The application is made under r 13 of the Criminal Proceedings (Access to Court Document) Rules 2009. The factors to be considered on such an application are set out in r 16. Rules 13 and 16 provide:

¹ *R v Ali* [2016] NZHC 3077, at para [64].

² *Ibid*, at paras [60] and [64](d).

³ Mr Kurisi was sentenced today, 2 February 2017: *R v Kurisi* [2017] NZHC 62.

13 Applications for permission to access documents, court file, or formal court record other than at committal or trial stage

- (1) This rule applies whenever the permission of the court is necessary under these rules and is sought to access a document, court file, or any part of the formal court record relating to a criminal proceeding, except where access may be sought under rule 8 or 9.
- (2) An application under this rule is made informally to the Registrar by a letter that—
 - (a) identifies the document, court file, or part of the formal court record that the applicant seeks to access; and
 - (b) gives the reasons for the application.
- (3) The application is heard and determined by a Judge or, if a Judge directs the Registrar to do so, by the Registrar.
- (4) On receipt of an application made in accordance with subclause (2), the Judge or Registrar may direct that the person file an interlocutory application or originating application.
- (5) The applicant must give notice of the application to any person who, in the opinion of the Judge or Registrar, is adversely affected by the application.
- (6) The Judge or Registrar may dispense with the giving of notice under subclause (5) if it would be impracticable to require notice to be given.
- (7) The Judge or Registrar may deal with an application on the papers, at an oral hearing, or in any other manner the Judge or Registrar considers just.

16 Matters to be taken into account

In determining an application under rule 13, or a request for permission under rule 8 or 9, or the determination of an objection under those rules, the Judge or other judicial officers or Registrar must consider the nature of, and the reasons for, the application or request and take into account each of the following matters that is relevant to the application, request, or objection:

- (a) the right of the defendant to a fair hearing:
- (b) the orderly and fair administration of justice:
- (c) the protection of confidentiality, privacy interests (including those of children and other vulnerable members of the community), and any privilege held by, or available to, any person:
- (d) the principle of open justice, namely, encouraging fair and accurate reporting of, and comment on, trials and decisions:
- (e) the freedom to seek, receive, and impart information:
- (f) whether a document to which the application or request relates is subject to any restriction under rule 12:

- (g) any other matter that the Judge, other judicial officer, or Registrar thinks just.

[6] The application is made by a reporter from Fairfax Media. The application is in broad terms and, if granted, would entitle the reporter to search the entire Court file. While I accept that there is sufficient reason for the reporter to undertake a search of the Court file, the factors set out in r 16 indicate that a more limited order should be made than that proposed.

[7] In particular, there is sensitive information of a personal nature (in relation to the victims) on the Court file that may attract a valid reason to refuse inspection, on privacy grounds: see r 16(c) of the Rules. Accordingly, I shall make an order that will enable the reporter to review the notes of evidence and then (if necessary) to make a more specific application, as contemplated by r 13(2) of the Rules. No suppression orders were made in respect of oral evidence given in open Court.

[8] I make an order that the reporter may search, copy and inspect the notes of evidence given at Mr Ali's trial. Once that has been done a more specific application may be made under r 13(2), if necessary.

P R Heath J

Delivered at 9.00am on 3 February 2017