

POLICE

v

TUPUNA RAKANUI

Hearing Date: 24 July 2013
Counsel: Mrs K Saunders for the Crown
Mr N George for the Defendant

DECISION OF HUGH WILLIAMS J

[FTR 11:55:29]

- [1] Mr Rakanui currently faces a charge of injuring with intent to injure. The person he is said to have injured in that way is his wife Eleanor Rakanui.
- [2] On earlier calls of this matter, Mr George, counsel for Mr Rakanui, suggested that Mrs Rakanui would exercise what lawyers call her 'spousal privilege' and would at trial decline to give evidence against her husband.
- [3] The likelihood in cases such as this is that the spouse of the accused is the prime witness in the prosecution and that without the spouse's evidence the prosecution has no or little chance of success. It was directed that Mrs Rakanui come to Court today in order that the Court could be advised as to her stance as to giving evidence.
- [4] In legal terms, under the Evidence Act 1968 Mrs Rakanui as the wife of the accused is competent – a term the lawyers use to denote that a witness is capable of giving evidence – but she is not compellable – the term lawyers use to denote whether she can be required or summonsed to give evidence as a witness for the prosecution.

[5] In evidence today Mrs Rakanui has said very clearly that she intends to exercise her rights irrespective of when this matter might come to trial and that she is settled in her intention to exercise her spousal privilege. She said that she and the accused have put this matter behind them and that, with assistance, they are putting their lives back together and are reconciled.

[6] In light of that, the Solicitor-General for the Crown responsibly accepts that even though Mrs Rakanui made a signed statement at the time of the incident giving rise to the charge, the Crown effectively has no case, given Mrs Rakanui's stance to the giving of evidence.

[7] Accordingly the Solicitor-General seeks leave to withdraw the prosecution against Mr Rakanui. There will be an Order to that effect.

[8] Mr George seeks an Order for costs of \$500 towards the prosecution. He says that the possibility of Mrs Rakanui's spousal privilege being exercised was raised with the Crown from a very early stage of this prosecution.

[9] That may well be the case. It is not infrequently the case in prosecutions of husbands by wives that the wives change their mind and decline to give evidence, but nonetheless the Police, faced with a signed statement by Mrs Rakanui at the time, were obliged to investigate the matter - as they are obliged to investigate all complaints - and were obliged to lodge an information against Mr Rakanui if they concluded that the circumstances might give rise to a prosecution. That again is an action the Police take habitually, leaving the rights and wrongs of the matter to be ventilated in Court and a proper judgment reached. That is one reason why the application for costs cannot succeed.

[10] The second reason is that Mr and Mrs Rakanui, again living together, are undertaking counselling and seeking assistance from their pastor and others. In those circumstances, even though any order for costs would be payable by the Crown, the Court sees it as inimical to the current state of the relationship between these parties to make any order for costs.

[11] The application is accordingly declined.

A handwritten signature in black ink, appearing to read "H Williams", written in a cursive style. The signature is positioned above a horizontal line.

Hugh Williams, J