EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

IN THE DISTRICT COURT
AT NEW PLYMOUTH

I TE KŌTI-Ā-ROHE
KI NGĀMOTU

CIV-2018-043-000236
[2018] NZDC 18053

BETWEEN	MARLERN DEIDRE HOHEPA Applicant
AND	NEW ZEALAND POLICE Respondent

Appearances: C J Tennet for the Applicant
[The Sergeant] for the Respondent

Judgment: 6 September 2018
(On the papers)

JUDGMENT OF JUDGE G P BARKLE
[in respect to application for costs by Applicant]

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[1] The applicant filed an application dated 5 July 2018 seeking return of property seized by the police on 27 March 2018 while conducting a search pursuant to the Search and Surveillance Act 2012. The property sought to be returned by the applicant was:

(a) Apple iPhone

(b) NZ$240 (cash)

(c) HK$50 (cash)

("the property").

[2] The property was returned to the applicant by the police on 19 July 2018 at 2.00 pm.

[3] The applicant seeks costs in respect of her application on a category 1A basis, District Court Rules 2014.

Background

[4] As a result of the search conducted by the police on 27 March 2018, the applicant was charged with one offence. On 31 May 2018, the charge was withdrawn following application by the police in the New Plymouth District Court.

[5] Counsel for the applicant, Mr Tennet advised in a memorandum dated 27 August 2018 that he sent emails on 6 June 2018, 12 June 2018 and 18 June 2018 to either the officer in charge of exhibits, [the Detective] or the prosecution service at New Plymouth seeking return of the property. No response was received to those emails.

[6] In a memorandum from the police, [the Sergeant] advised that the police prosecution service had checked their own internal emails but had not been able to locate any email from Mr Tennet in respect of the return of property to Ms Hohepa. [The Detective]'s advice to [the Sergeant] was that he first became aware of an issue in respect of the return of the property to Ms Hohepa when the originating application was received by him in mid-July 2018.

[7] In his memorandum, referring to the three emails I have set out above, Mr Tennet advised that an affidavit could be provided along with copies of the relevant emails and read receipt documents. Mr Tennet is an experienced barrister and an officer of the Court, and I accept would not have provided the information in his memorandum unless it was correct. Accordingly, I proceed on the basis that the three emails that he has referred to were sent prior to the originating application being filed.

[8] [The Sergeant] advised that between the withdrawal of the charge on 31 May 2018 and the return of the property on 19 July 2018, [the Detective] had been at a police training course until 15 June 2018. Thereafter, [the Sergeant] said that before returning money the police are required to check with the Inland Revenue Department and the Ministry of Justice to ensure that there are no claims over the money.

[9] Mr Tennet also explained that following return of the property he had tried to resolve costs directly with the police but had been unsuccessful. Two emails had been sent in that endeavour.

Submissions in respect to costs

[10] Mr Tennet advised that Ms Hohepa was not legally aided and because of the time taken by the police she had instructed counsel to take steps to have the property returned. Following the earlier referred to emails not resulting in his client being provided with her property, the application had been filed.

[11] Counsel submitted that category 1A District Court Rules 2014 was the appropriate one for an award of costs. That would result in costs being paid by the police of $1652.

[12] In opposition to any award of costs [the Sergeant] submitted that the time taken for return of the property was not excessive and in any event was appropriately explained. The sergeant noted that costs are at the discretion of the Court and submitted that if an award was made it should be proportionate to the issues and quantum at stake. [The Sergeant] submitted that the costs sought even on a category 1A basis were excessive.

Decision

[13] In my determination, the period between when the charge against Ms Hohepa was withdrawn and the date of return of the property, being a period of approximately

seven weeks, was excessive having regard to the limited amount of property that was involved.

[14] I accept that [the Detective] was at a training course for some of that period but the return of the property could have been completed by another officer despite resources of the police being stretched. Even after completion of the training course there was adequate time for the required enquiries to be carried out and property returned without an application having to be filed. I have already noted and accepted the advice of Mr Tennet that three emails were sent to the police during June 2018 prior to the originating application being filed seeking the property be returned. Once the application had been filed then the police acted relatively promptly to return the property to Ms Hohepa.

[15] Nevertheless, it was necessary for that application to have been filed for the required response to have been achieved. Thereafter it seems the opportunity was provided to the police for the issue of costs to be resolved but that was not achieved. The applicant's counsel was required to file two memoranda in support of the originating application.

[16] [The Sergeant] was correct to submit that any award of costs and if made the matter of quantum are both matters of discretion of the Court. Nevertheless, the costs regime set out in the District Court Rules 2014 should be abided by unless there is good reason to the contrary.

[17] Rule 14.7 District Court Rules 2014 provides the basis on which there may be a refusal of or reduction in costs. I accept that I need to have regard to the relatively low value of the property involved and while there would have been some inconvenience to Ms Hohepa in not having the property promptly returned, there is no evidence or submission made that such inconvenience was out of the ordinary.

[18] When I consider the table of costs that have been set out in Mr Tennet's memorandum of 27 July 2018, the period of one day provided for the preparation, filing and service of the originating application seems excessive. In addition to the application, the applicant's counsel completed two memoranda, albeit short.

[19] Standing back I am of the view that an award of costs is appropriate because the property should have been returned by the police prior to the date that it was. The filing of the originating application was justified. Resolution of costs should have been achieved but it appears the police position was that there should be no payment of costs.

[20] Bearing those matters in mind my determination is that the police should make a payment of $750 on account of costs to the applicant.

G P Barkle
District Court Judge