

**IN THE DISTRICT COURT
AT WHANGAREI**

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

**CIV-2021-088-000496
[2022] NZDC 16431**

BETWEEN

KEVIN JOHN TITO
TUI-DOROTHY TITO
Applicants

AND

NEW ZEALAND POLICE
Respondent

Hearing: 24 August 2022

Appearances: Mrs Tito in person and for Mr Tito
J Golightly for the Respondent

Judgment: 9 September 2022

RESERVED JUDGMENT OF JUDGE D J CLARK

The Tito's firearm licences are revoked

[1] Mr and Mrs Tito have had their firearms licences revoked by the respondent. It is not the first time. Nor is it the first time Mr and Mrs Tito have been before the Court seeking to have the decision of the respondent overturned on appeal.¹

[2] The 2017 appeals were dismissed by His Honour Judge D J McDonald as he found Mr and Mrs Tito were not fit and proper persons to hold their firearms licences. The issue in that case arose as a result of an adverse decision in the Māori Land Court and the subsequent response to that result by Mr and Mrs Tito.

¹ See *Tito v Commissioner of New Zealand Police* [2017] NZDC 25472 [13 November 2017].

[3] Mr and Mrs Tito wrote an email to the Hon Mr Kelvin Davis. The email caused concern for His Honour which he expressed as follows:²

It is their attitude generally towards firearm licencing and in particular their attitude towards the role of the police officers that causes me concern. It is particularly Ms Panui-Phillips [Mrs Tito in this proceeding] attitude towards persons in authority who have, like the Māori Land Court Judge, an obligation to administer the laws as passed by Parliament.

[4] History has appeared to have repeated itself. The current revocation of Mr and Mrs Tito's firearm licences by the respondent is as a direct result of the continuing struggles Mr and Mrs Tito have with their proceedings in the Māori Land Court. Their aggression and attitude towards the Māori Land Court staff triggered the current steps which were taken by the respondent to revoke their licences.

The Incident at the Māori Land Court Registry in March 2021

Background

[5] A consideration of the background leading to this incident is necessary.

[6] Mr Tito is a trustee and beneficiary of an Ahu Whenua Trust which owns a block of land located in Mangakahia Northland. The property is the subject of a lease in favour of a Mr and Mrs Booth.

[7] For a number of years Mr Tito has been seeking orders for the cancellation of the Trust. He has been unsuccessful in this regard, both in the Māori Land Court and the Māori Appellant Court, together with the Superior Courts including the Supreme Court.

[8] On 31 January 2017 Judge Armstrong of the Māori Land Court issued an injunction³ prohibiting Mr Tito (together with his agents, workers, employees, contractors or invitees) from taking steps to cancel, terminate, frustrate or otherwise interfere with the lease of the land.

² Ibid at [34].

³ 146 Taitokerau MB 190-209. The decision was subsequently dismissed in the Māori Appellant Court.

[9] In late 2019, Mr Tito breached the injunction by occupying the land and placing containers on it, blocking access. Enforcement proceedings for the injunction were issued in High Court which resulted in possession orders being granted and warrants for his arrest also being issued following his refusal to abide with the possession order.

[10] On 21 May 2020, Brewer J in the High Court held Mr Tito in contempt of the Māori Land Court and ordered him to pay a fine of \$2,000 as well as the Booths' legal costs of \$17,627.00.⁴

[11] On 23 December 2020, Mr Tito sought to set aside the judgment of Judge Armstrong. The application was not accepted by the Registrar for filing given the matter had been dismissed on appeal in the Māori Appellant Court. Mr Tito filed an application for review of the Registrar's decision on 11 January 2021 and the matter was set down for a Special Hearing on 16 March 2021.⁵

The Incident

[12] On Friday 9 March 2021 Mr and Mrs Tito, together with a Mr Ransfield, attended upon the Māori Land Court Registry's offices.

[13] Mr and Mrs Tito say the purpose of attending was to request that a Registrar of the Court set aside the injunction. Mr Brandon Ward, a Deputy Registrar of the Māori Land Court was the person who was attending at the counter. He refused to set aside the injunction explaining to Mr and Mrs Tito and Mr Ransfield that he did not have the power to make such an order.

[14] It is common ground, Mr Ransfield became verbally abusive towards Mr Ward. They were asked to leave but they refused until they were given what they came for.

⁴ *Booth v Tito* [2020] NZHC 1071 [21 May 2020].

⁵ See Judge Ware's decision in 227 Taitokerau MB 188 at [14]. The decision has set out a number of steps which were taken by Mr Tito up to this incident. The application for review was dismissed by Judge Ware.

[15] Mr Ward was joined at the counter by further Court staff, Ms Toni Wirihana and later, Ms Katharine Taurau. Mr Ward and Ms Wirihana stated Mr Ransfield, together with Mr and Mrs Tito were yelling and abusive towards them.

[16] Ms Wirihana and Mr Ward also say they were not only subjected to oral abuse. They allege offensive hand gestures were made towards Mr Ward. They included strangulation gestures, cutting of the throat, and using their fingers to form into a pistol and pointing the same towards Mr Ward. Both Ms Wirihana and Mr Ward confirm that they were traumatised by the events.

[17] Mr and Mrs Tito deny any such gestures took place.

[18] Mr Ward subsequently laid a complaint with the police. In his complaint he detailed the interaction with Mr Ransfield and Mr and Mrs Tito. He confirmed as a result of the refusal of Mr and Mrs Tito and Mr Ransfield to leave, security staff were called, and the Police were also called.

[19] Mr Ransfield, together with Mr and Mrs Tito eventually left the Registry following them being provided with a letter which had been drafted by Mr Ward which confirmed Mr Ward's inability to set aside the injunction. The Police were then called again, advising they were no longer needed.

[20] When Mr Ward and Ms Wirihana left the Court building at 5.15 pm they took an alternative route as they spotted Mr Ransfield and Mr and Mrs Tito at the front of the Court building. They exited through the rear of the building as they did not wish to make contact with them.

[21] As a result of the complaint laid by Mr Ward, a trespass notice was issued against Mr and Mrs Tito by the Police and they were formally warned.

The Revocation of the Tito's Firearms Licences

[22] On 3 May 2021, Inspector Jason Greenhalgh, Inspector for Arms, Safety and Control for the respondent wrote separately to Mr and Mrs Tito, advising them that a temporary suspension of their licences would be put into place following a

consideration of the revocation of their firearms licences. The grounds relied upon and set out in the letter were:

- (a) The incident which occurred in the Māori Land Court office on 9 March 2021;
- (b) The subsequent issuing of the formal written warning and the trespass notice;
- (c) A report that on 18 March 2021, Mr and Mrs Tito were verbally abusive towards their landlord when the landlord was undertaking an inspection at their rental property;
- (d) The previous 2018 incident concerning the threatening email sent to the Hon Kelvin Davis.

[23] On 17 June 2021, Inspector Greenhalgh again wrote to Mr and Mrs Tito advising them their respective firearms licences were to be revoked. The grounds relied upon by Inspector Greenhalgh were the same grounds as set out in his letter of 3 May 2021. Inspector Greenhalgh considered the Māori Land Court incident demonstrated to the respondent the Tito's had failed to understand the reasons why their licences had previously been revoked. Of concern, were the gestures of shooting another person which were not consistent with the criteria for a fit and proper person.

[24] The letter concluded by advising Mr and Mrs Tito they had the right to have the decisions reviewed.

[25] Mr and Mrs Tito took the opportunity to review the decision and after considering the same, on 10 September the respondent wrote to Mr and Mrs Tito separately advising them their review was unsuccessful. The letter did however acknowledge the complaint, as filed by Mr Ward, was disputed by Mr and Mrs Tito.

[26] Mr and Mrs Tito then filed these proceedings on 8 October 2021.

The Grounds of Appeal

[27] Mr and Mrs Tito seek an order for the reinstatement of their firearms licences to entitle them to continue living as “man and woman, to hunt and gather food to feed their whanau”. They also seek an order removing all records from their profiles held by the respondents to their threatening behaviour. No mention of this latter order was made during the hearing. In any event I have no jurisdiction to make such an order and therefore decline to do so.

[28] The grounds for the orders are:

- (a) They deny making any of the hand gestures as alleged by Mr Ward and Ms Wirihana;
- (b) The allegations are “hearsay” and as such the respondent was not entitled to rely on them when making its decision. Furthermore, they are inadmissible in this Court;
- (c) No charges had ever been laid in respect of trespass;
- (d) The landlord gave a false report to the Police of the alleged threatening behaviour;
- (e) The respondent had unlawfully and unprofessionally profiled Mr Tito as a person who was “mentally unstable and dangerous”, and they have never injured or harmed anyone or any persons property.

[29] Finally, the Tito’s rely on Article 6 of the International Covenant on Civil and Political Rights (ICCPR), Article 6 and Part 2, s 8 of the New Zealand Bill of Rights Act 1990 (NZBORA).

Notice of Opposition

[30] The respondent opposes the application. It has filed a notice of opposition on 15 November 2021 relying on the grounds there were no errors of fact or law in the

decision which were made on 17 June 2021. It maintains Mr and Mrs Tito are not fit and proper persons to possess a firearm or an airgun.

Evidence

[31] Mr and Mrs Tito filed affidavits dated 8 October 2021. They also filed a joint affidavit dated 1 June 2022.

[32] Inspector Greenhalgh filed an affidavit dated 6 December 2021.

[33] The three Māori Land Court staff who were involved in the incident in March 2021 have also filed affidavits. These affidavits have been filed as a result of Mr and Mrs Tito asking each of them by way of email a series of questions to be answered by way of an affidavit. Many of the answers which they gave were not particularly helpful to Mr and Mrs Tito and the matter was referred to His Honour Judge Rzepecky. The Titos wanted the witnesses to be summonsed even though they had asked the witnesses for their affidavits.

[34] Ms Golightly for the respondent indicated she did not need to ask any questions and therefore the need to summons the witnesses was unnecessary.

[35] His Honour ruled⁶ Mr and Mrs Tito did not have to rely on these witnesses' evidence and therefore was not prepared to direct the witnesses be summonsed.

[36] Following the issuing of Judge Rzepecky's Minute, Ms Golightly confirmed the respondent was intending to rely on Mr Ward's evidence. An issue arose as to whether Mr Ward should be physically present in Court or could provide his evidence by way of AVL. Judge Rzepecky had previously ruled⁷ all witnesses (other than Mrs Tito) could appear by AVL. I confirmed that position in a Minute which I issued on 23 August 2022, but as it turned out Mr Ward was unable to connect to the Court by way of AVL. He agreed to appear in person and did so accordingly.

⁶ Minute dated 13 June 2022, para [5].

⁷ Minute of 15 February 2022.

[37] Ms Wirihana was not called by Mr and Mrs Tito, although Ms Taurau was called. Ms Taurau appeared by AVL as did Inspector Greenhalgh.

Legislative Framework

[38] An appeal against the revocation of a firearms licence is made under s 62B of the Arms Act 1983 (the Act). The decision to revoke the licences was made under ss 27 and 28 of the Act.

[39] The process on appeal is a hearing *de novo*. In *Fewtrell v Police*⁸ Goddard J stated:

The hearing on appeal should have been conducted *de novo*, giving due weight to the opinion of the Inspector and to all other evidence adduced but without applying the legal onus of proof which attaches to one party or another in an adversarial situation, and with a full hearing of oral evidence if appropriate. There was no presumption in favour of the Inspector's decision and no onus is on the appellant to satisfy the Judge that the Inspector's decision was wrong.

[40] The assessment to hold a firearms licence in New Zealand is based on whether a person is a "fit and proper person" to hold such a licence. The consideration of the same is set out in s 24 of the Act. The relevant provisions within s 24 are:

24 Issue of firearms licence

- (1) Subject to subsection (2), a firearms licence must be issued by a member of the Police to an applicant if the member of the Police is satisfied that—
 - (a) the applicant—
 - (i) is of or over the age of 16 years; and
 - (ii) is a fit and proper person to be in possession of a firearm or an airgun; and
 - ...
- (2) A firearms licence must not be issued to an applicant if, in the opinion of a commissioned officer of Police, access to any firearm or an airgun in possession of the applicant is reasonably likely to be obtained by any person who—
 - (a) is disqualified from holding a firearms licence; or

⁸ *Fewtrell v Police* [1996] 14 CRNZ 372.

- (b) has had their firearms licence revoked on the ground that they are not a fit and proper person to be in possession of a firearm or an airgun; or
- (c) is not a fit and proper person to be in possession of a firearm or an airgun.

[41] In *Tito v Commissioner of New Zealand Police*⁹ His Honour Judge D J McDonald adopted the following commentary from two previous District Court cases:¹⁰

[5] In *Pederson v New Zealand Police* Judge Rea adopted and followed Judge Neave in *McCabe v Police*:

[26] In *McCabe v Police* Judge Neave made the following observation about the determination of a fit and proper person:

[3] Under the Arms Act 1983 (“the Act”) a person who applies for a firearms licence shall be issued with such licence as a member of the police to whom the application is made is satisfied that the applicant is of or over the age of 16 years and is a fit and proper person to be in a possession of a firearm or airgun (s 24 Arms Act 1983). Exactly what is meant by fit and proper person is not spelled out in the legislation. Such a determination clearly requires consideration of the applicant’s overall character and history to determine that they are the sort of person who should be allowed to be the holder of a firearms licence and thus entitled to lawful possession of firearms. It is perhaps apt to note the long title of the Arms Act 1983 which states that it is “an act to consolidate and amend the law relating to firearms and to promote both the safe use and the control of firearms and other weapons”. Clearly the considerations of promoting safe use and control of firearms must inform any decision on the fitness and propriety of any particular person holding a firearms licence.

[27] I gratefully adopt those comments and also consider they are just as applicable in “revocations” such as this as they are to “application” cases such as the one Judge Neave was dealing with.

[42] Judge McDonald concluded then:¹¹

[6] I must look at the issues afresh. The criteria for fitness to hold a firearms licence must focus on safety, the risk to themselves and risk to others.

⁹ Supra at n1

¹⁰ Supra at para [5].

¹¹ At para [6].

[43] In revoking Mr and Mrs Tito’s firearm licences, the respondent relied on s 27(2), s 27C and s 24A(2)(c). Each of these sections focus on whether the holder of a licence is a fit and proper person taking into account a range of relevant factors concerning firearms control.

[44] Ms Golightly also submits, which I accept, the fit and proper person test should consider the purposes of the Act. Section 1A states:

1A Purposes of this Act

- (1) The purposes of this Act are to—
 - (a) promote the safe possession and use of firearms and other weapons; and
 - (b) impose controls on the possession and use of firearms and other weapons.
- (2) The regulatory regime established by this Act to achieve those purposes reflects the following principles:
 - (a) that the possession and use of arms is a privilege; and
 - (b) that persons authorised to import, manufacture, supply, sell, possess, or use arms have a responsibility to act in the interests of personal and public safety.

[45] Ms Golightly also relied on *Ries v New Zealand Police*¹² where His Honour Judge Spear upheld the definition of what constitutes a fit and proper person as set out within the New Zealand Police Arms Manual. That definition states:

A fit and proper person is a person of good character who can be trusted to use firearms responsibly – this is essential to arms control in New Zealand.

[46] In *Moosman v New Zealand Police*¹³ the definition in the New Zealand Police Arms Manual is also referred to with approval. The New Zealand Police Arms Manual has now been replaced with instructions on compliance. In terms of a definition for fit and proper person it reads:

A “fit and proper person” is a person “of good character where the court will be confident that will abide by the Arms Act 1983 and can be trusted to use firearms responsibly (*Carruthers v Police*, District Court Opotiki CRI-2011-

¹² *Ries v New Zealand Police* [2019] NZDC 11626 at 9.

¹³ *Moosman v New Zealand Police* [2021] NZDC 23700.

047-50, 12 April 2012). The assessment is a factual one and to be determined in each case which requires the consideration of the applicant's general character and temperament (*Police v Cottle* [1986] 1 NZLR 268 (HC)). Whether the applicant is a risk to himself or herself or to others will also be relevant (*Jenner v Police* [2016] NZDC 4102).¹⁴

[47] In my view, it is essential New Zealand has a robust gun control regime. The licensing of persons who legally own guns statutorily recognises certain persons can be trusted to have in their possession weapons which can cause significant harm. As such they must meet a very high threshold and it is a privilege, not a right, to hold such a licence. Any abuse of that privilege will have the consequence of the licence being revoked.

Article 6 of the ICCPR and s 8 of the NZBORA

[48] Mr and Mrs Tito argue they are entitled to rely on Article 6 of the ICCPR and s 8 of the NZBORA.

[49] Both Article 6 ICCPR and s 8 of the NZBORA deal with the rights for a human not to be deprived of life. In that context the right to 'life' is the right to stay alive. In this context, the right to "live" as Mr and Mrs Tito wish to, by providing for whanau using firearms, comes with specific control. That control is under the provisions of the Act. Accordingly, Article 6 ICCPR and s 8 of the NZBORA have no application to this appeal.

Is the Evidence Surrounding the Incident Hearsay and Inadmissible?

[50] Mr and Mrs Tito say that the information which was then relied upon by Inspector Greenhalgh was "hearsay" with the consequence the respondent was not entitled to rely on the allegations of Mr Ward, especially when those allegations are contested. Holland J in *Police v Cottle*¹⁵ stated:

I am satisfied that a District Court Judge sitting on an appeal under the Arms Act is entitled to take into account hearsay evidence providing in doing so the Judge acts fairly and complies with the law of natural justice. A similar obligation would rest on the Commissioned Officer of Police hearing the original application.

¹⁴ Compliance – revocations, etc. Arms Act Ten One – New Zealand Police Intranet at pp 28-29.

¹⁵ *Police v Cottle* [1986] 1 NZLR 268 at 272.

[51] I note that Inspector Greenhalgh provided Mr and Mrs Tito with an opportunity to comment on the allegations which they did so. After taking into account their comments, Inspector Greenhalgh reached the conclusion Mr and Mrs Tito were not fit and proper persons.

[52] In this proceeding, Mrs Tito has been given the opportunity to put her version of the incident to the Court. The situation is however different in respect of these proceedings because direct evidence of the incidence has been received from the Māori Land Court staff. Any potential inadmissibility issues on that incident, notwithstanding the decision in *Cottle*, have been cured by this evidence.

Are Mr and Mrs Tito Fit and Proper Persons to Hold a Firearms Licence?

[53] I turn to the consideration of whether Mr and Mrs Tito fit and proper persons to hold a firearm licence.

[54] Although the respondent relies on the altercation with the landlord as well as the email which was sent to the Hon Kelvin Davis, the primary ground for the revocation was the incident which occurred in the Māori Land Court in March 2021.

[55] Mr and Mrs Tito accept the Māori Land Court incident was heated and there were angry exchanges. They deny they were involved in those angry exchanges and instead say Mr Ransfield was the person who raised his voice and was angry at Mr Ward. In submission and in her evidence, Mrs Tito says once Mr Ward provided them with his letter confirming his refusal to overturn the injunction, they accepted the same and left. It was Mr Ransfield who inflamed matters and they did not.

[56] Mrs Tito is adamant the hand gesticulations were never made. She says Mr Tito was at all times positioned behind a concrete column and could not be viewed by Mr Ward throughout the incident. She confirms she was positioned behind Mr Ransfield.

[57] Mrs Tito accepts Mr Tito made one gesticulation which was the waving of his hand across his neck area. She says the purpose of this gesture was to stop matters

immediately given how heated things had become. It was intended to calm matters down, for the angry exchanges to stop, and for them to leave. She says neither she nor Mr Tito said anything throughout the exchanges.

[58] Mr Ward's evidence significantly contradicted Mrs Tito's. He confirmed both Mr and Mrs Tito were making the alleged gestures. Both were as vocal as Mr Ransfield in terms of the abuse Mr Ward was receiving. Both were walking around in an agitated state behind Mr Ransfield and did not stay stationary during the incident. This was especially so when he returned with his letter. It was after the letter was delivered that he says the hand gestures occurred.

[59] Mrs Tito sought to rely on Ms Taurau's evidence both in terms of her affidavit and the oral evidence she gave. Mr Taurau entered the incident relatively late. She confirmed she did not see any of the hand gestures. She confirmed in her affidavit Mr and Mrs Tito were pacing in an agitated way behind Mr Ransfield. She said her focus was more on Mr Ransfield given he was the one who was at that stage abusing Mr Ward.

[60] Ms Wirihana was not called and therefore her evidence was not tested. Her affidavit says she confirmed Mr and Mrs Tito were making gun gestures with their hands. She also observed Mr Tito make throat slitting gestures at Mr Ward. She confirms she felt scared and intimidated by the behaviour of Mr Ransfield and Mr and Mrs Tito.

[61] In terms of Mr Ward's evidence, I found Mr Ward to be articulate and accurate in terms of his recall of the events. I asked Mrs Tito whether she considered Mr Ward was lying. She considered he was. Ms Golightly submitted there would be no reason for Mr Ward to lie. In response to Ms Golightly during cross examination, Mrs Tito said she believes Mr Ward has a personal issue against both Mr and Mrs Tito. She claimed throughout the course of the Māori Land Court proceedings he has been unable to discharge his obligations as a Deputy Registrar and has deliberately impeded their proceedings.

[62] I accept Mr Ward's recount of the incident and reject Mr and Mrs Tito's. I accept the hand gestures were made by both Mr and Mrs Tito at various stages following the delivering of Mr Ward's letter. I find further that the interactions and the behaviour of Mr and Mrs Tito were aggressive, intimidatory and unacceptable to the employees and a Deputy Registrar of the Māori Land Court. Mr Ward had every right to lay the complaint with the Police given the circumstances which confronted him on that evening.

[63] In saying the above, I also accept Mr Tito may have made the gesture to stop matters by waving his hand under his neck. This gesture and the hand gestures complained of by Mr Ward and Ms Wirihana were separate and distinct events.

Decision

[64] I have considered all matters afresh and revisited the evidence which the respondent did when making the decision to revoke the Tito's firearm licences.

[65] The Māori Land Court proceedings appear to be a continuing boiling point for Mr and Mrs Tito in terms of their behaviour. If matters go against them, they react in an unacceptable way. Threats were originally made in the email which was sent to the Hon Kelvin Davis. In this recent incident verbal abuse and threatening gestures were levelled at Māori Land Court staff. Anger and abuse were also levelled at their landlord. A trespass notice was issued and again the Police were involved. All of these incidences reflect an uneven temperament when things do not go their way.

[66] The disrespectful attitude Mr and Mrs Tito have towards persons in authority, especially those persons who are exercising administrative or statutory duties which contradict the interests of Mr and Mrs Tito, are of significant concern. There can be only one interpretation of the gestures. They were direct threats against Mr Ward, designed to intimidate him into overturning a decision of a Judge when he clearly had no authority to do so. In my view, persons who are prepared to make such threats are persons who cannot be trusted to hold firearms licences.

[67] In the circumstances, I find that Mr and Mrs Tito are not fit and proper persons to hold firearms licences given the provisions of the Act. Accordingly, their appeal is dismissed.

Costs

[68] I have not heard from the parties in respect of costs. If the respondent seeks costs, then I am inclined to not award costs given the circumstances of the case. However, if the respondent does seek costs then submissions from Ms Golightly need to be filed within 14 days of the date of this decision, and from Mr and Mrs Tito 14 days thereafter. I will then deal with the matter on the papers.

Signed at Auckland this 9th day of September 2022 at 10.30 am

Judge D J Clark

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 09/09/2022