

The Queen v Kamitsis [2015] NTSC 48

PARTIES: THE QUEEN

v

KAMITSIS, Alexandra

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
TERRITORY EXERCISING
TERRITORY JURISDICTION

FILE NO: 21452774

DELIVERED: 18 AUGUST 2015

HEARING DATES: 14 AUGUST 2015

JUDGMENT OF: MILDREN AJ

CATCHWORDS:

EVIDENCE – Suppression orders – *Evidence Act (Northern Territory)* s 57(1)(b) – Application to prevent publication of the defendant’s name – Whether a realistic possibility of the publication creating a risk that the trial would be unfair or cause undue prejudice or undue hardship – Public interest – Nature of charges – Risk of jurors considering published materials in their deliberations can be addressed through appropriate directions – Application dismissed.

EVIDENCE – Suppression orders – *Evidence Act (Northern Territory)* s 57(1)(a) – Application to prevent publication of photographs of the defendant – Material sought to be suppressed not ‘evidence’ – No power for the Court to suppress impugned material – Application dismissed.

EVIDENCE – Suppression orders – Inherent jurisdiction to restrain publication of material to prevent threatened contempt of Court – No

substantial or real risk the material would seriously interfere with the administration of justice – Application dismissed.

Criminal Code s 227(1)(b).

Evidence Act (Northern Territory) ss 57(1)(a); 57(1)(b)(iii).

Australian Broadcasting Corporation v L and Anor (2005) 16 NTLR 186; *Hinch v The Attorney-General for the State of Victoria and Ors* (1987) 164 CLR 15, applied.

Advertiser Newspapers Ltd v Bunting & Ors [2000] SASC 458, followed.

General Television Corporation Pty Ltd v DPP (Vic) and Anor 19 VR 18, 182 A Crim R 496; *John Fairfax Publications Pty Ltd v District Court of New South Wales* (2004) 61 NSWLR 344; *News Digital Media Pty Ltd and Anor v Mokbel and Anor* (2010) 30 VR 248; *Nine Network Australia Pty Ltd v McGregor SM and Ors* (2004) 14 NTLR 24, referred to.

REPRESENTATION:

Counsel:

Plaintiff:	D Morters
Defendant:	Tippett QC
ABC, Channel 9, NT News:	W Roper

Solicitors:

Plaintiff:	Director of Public Prosecutions
Defendant:	Maley & Burrows
ABC, Channel 9, NT News:	Minter Ellison

Judgment category classification:	B
Judgment ID Number:	Mil15536
Number of pages:	12

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

The Queen v Kamitsis [2015] NTSC 48
No. 21452774

BETWEEN:

THE QUEEN
Plaintiff

AND:

ALEXANDRA KAMITSIS
Defendant

CORAM: MILDREN AJ

REASONS FOR JUDGMENT

(Delivered 18 August 2015)

- [1] The accused, Alexandra Kamitsis, has been indicted to stand trial before this Court on 20 counts of obtaining a benefit for herself or another by deception contrary to s 227(1)(b) of the *Criminal Code*. There are also a number of counts of stealing which are pleaded as alternatives to the majority of the counts of obtaining a benefit by deception. Originally an information was laid which contained a total of 148 charges which was dealt with at the committal proceedings held on 12 May 2015. The accused was discharged on 16 of those counts which were withdrawn, and committed for trial on the remaining counts. As can be seen the present prosecution relates to a much smaller number of charges.

- [2] The trial has been listed for hearing commencing 17 November 2015. The particulars of the counts relating to the charges of obtaining a benefit by deception mostly relate to an allegation that the defendant, who was the principal of the travel agency business called Latitude 69 Pty Ltd presented invoices in relation to a pensioner concession entitlement for amounts which were not the proper amount payable for the pensioners' travel concession. In relation to three of the counts it is alleged that the invoice presented for payment was false in that the persons concerned had not sought payment of a pensioner travel concession.
- [3] The present application is made by the accused for an order that pending the commencement of the trial, her name and any material that may have the effect of identifying her, be suppressed from publication. The order that is sought is pursuant to the provisions of s 57(1)(b)(iii) of the *Evidence Act* or alternatively in the exercise of the Court's original jurisdiction. The grounds upon which the order is being sought, as set out in the application, are that the applicant has been subject to unprecedented press, both electronic and hard copy, since her arrest. A number of articles appearing in the NT News were relied upon. It was submitted that the articles were sensationalist and have on many occasions depicted the arrest of the applicant and portrayed her in handcuffs and being placed in the back cage of a police vehicle. A number of the articles have appeared on the front page of the NT News. It has been submitted that the reporting has been constant and has taken place over the period since her arrest.

- [4] Copies of the articles that have appeared in the NT News on the following dates are before the Court: 15 November 2014; 17 December 2014; 1 January 2015; 16 January 2015; 10 February 2015; 19 March 2015; 13 May 2015; 6 June 2015; 10 June 2015; 16 June 2015; 14 July 2015; 18 July 2015; 19 July 2015; 23 July 2015; and 14 August 2015. No material concerning what may have been published by other media has been placed before the Court although I was told without objection that there has been footage shown of the defendant in handcuffs and being placed in the back of the police van. In addition, I was told that there was some unspecified material on the internet and on a website.
- [5] Counsel for the accused, Mr Tippet QC, submitted that the articles in the NT News spoke for themselves and demonstrated baseless allegations unconnected with the present charges.
- [6] An examination of the material shows that the defendant has been connected with the resignation of the former Commissioner of Police; it has been alleged that the former Commissioner was forced to resign after he had had improperly sought to interfere in the police investigation into the original charges which were brought in the committal proceedings; that the Commissioner of Police had an improper relationship with the accused; that the accused had provided “benefits” to the Police Commissioner; that another senior police officer had been suspended; that the defendant had been involved in a corrupt arrangement with a former ministerial chief of staff against whom corruption charges have now been brought; and that the

defendant has also recently been charged with three counts of corruptly giving a benefit and one count of criminal deception.

- [7] A number of photographs have appeared of the accused in handcuffs. There have been headlines as well as photographs of the accused suggesting that there was a “web” linking the accused to a number of other politicians as well as another former political chief of staff. Coupled to all of this are suggestions that the amount of travel actually booked through the accused’s travel agency vastly exceeded the relatively small amounts which are the subject of the charges and that there should be an enquiry by an independent commission against corruption.
- [8] Mr Tippett submitted that the articles, so far as they imply that the defendant was involved in political corruption, were nonsense and irresponsible journalism. He submitted that the basis for the conclusions contained in the articles was not made out by a reading of the text (by this I understood him to be referring to the headlines rather than the text itself), and that the reporting was sensational and based on mere supposition.
- [9] Mr Tippett’s application was limited to the publication of the defendant’s name and any material that may have the effect of identifying her until commencement of her trial. No alternative application was made relating to any specific allegations. Mr Tippett submitted that the application was made to provide a small window between now and the trial so as to ensure that the accused gets a fair trial.

[10] It is difficult to know at this stage of the proceeding exactly what the principle issues will be when the trial commences. I know nothing about the terms of the contract made between the defendant and the parties that she has allegedly obtained a benefit by deception. I was told by counsel for the Crown, Mr Morters, that one of the issues in the trial will be the identification of the defendant. Obviously in order to establish its case, the Crown would need to establish that the defendant obtained a benefit by a deception which, by definition, means proof of an intentional deception by the defendant's conduct. Thus, what I anticipate must be proved at the trial will be that the defendant not merely made a claim for monies to which she was not entitled, but that she did so knowingly and deliberately by using deceptive means.

[11] What has also emerged in the article of 14 August 2015 is that another travel company allegedly rorted \$600,000 from Territory taxpayers, yet has been awarded almost exclusive rights to book future official Northern Territory Government trips. But no charges against this company have been laid. Four other agencies have also been "identified" and an internal report produced by a firm of external accountants claimed that there had been numerous over payments from the Government run scheme which were being dealt with through a task force aimed at completing an in-depth reconciliation.

[12] The overall impression, however, is that the defendant was at the centre of a web of graft which linked her with senior Government ministers, ministerial

aids and the former Commissioner of Police, and in which she had played a central role.

[13] There can be little doubt that much of the material which has been published so far would not be admissible at the defendant's trial and that some of it, at least, is highly prejudicial.

[14] Mr Roper, who appeared for the media organisations, the Australian Broadcasting Corporation, NT News and Channel 9, submitted that the quality of the journalism currently before the Court was not irresponsible, and in so far as it was reporting upon events in "other venues" it was fair and proper. By "other venues" I took him to mean the proceedings commenced in the Magistrates Court.

[15] In my opinion, Mr Roper's submission understates the overall effect of the articles published in the NT News. Why, for instance, whenever there is a story about other travel agents being involved in alleged roting of the taxpayers, is it necessary to remind the public that the defendant is the only travel agent to face charges? Indeed, in an article appearing in the NT News on Saturday 6 June, which is really all about ministerial travel expenses, why was it necessary to have a photograph of the defendant and her business and a headline "Latitude Given in Travel Fiasco", as well as a photograph of the defendant with the headline "Xana's Web Deepens"?

[16] The principles on which an order for suppression of the name of the defendant in criminal proceedings should be made or refused were

considered by the Court of Appeal in *Australian Broadcasting Corporation v L and Anor*.¹ In that case, Southwood J said:²

[65] Before a court may make an order pursuant to s 57 of the *Evidence Act* suppressing the publication of the name of a party to a proceeding before the court, the court must be satisfied that it is desirable to suppress the publication of the party's name, either for the furtherance of the administration of justice or otherwise in the interests of the administration of justice. The test to be applied is whether there is a realistic possibility of the publication creating a risk that the trial of the party in any proceeding in any court in the Northern Territory would be unfair or of the party suffering undue prejudice or undue hardship in the party's defence or in the conduct of his cause in any proceeding in any court in the Northern Territory: *Advertiser Newspapers Ltd v Bunting & Ors* [2000] SASC 458 at [19]. It is prejudicial to the administration of justice to create a risk of jeopardising a fair trial. The proper administration of justice is concerned with ensuring, as far as possible, that an accused receives a fair trial.

[66] The administration of justice extends at the very least to the preparation for trial or committal and to all matters of procedure. It extends to the anticipated future trial of a separate proceeding in another court of the Northern Territory: *John Fairfax Publications Pty Ltd v District Court of New South Wales* (2004) 61 NSWLR 344 at 353 [23].

[67] ...

[68] I agree with what Martin J, as he then was, said in *Advertiser Newspapers Limited v Bunting* (at [19]) about provisions similar to s 57 of the *Evidence Act*, namely that they require the court to:

“engage in a balancing exercise between the prejudice to the proper administration of justice and the considerations favouring publication. This process necessarily involves the court in a consideration of the nature and extent of the prejudice to the proper administration of justice that might occur if an order for suppression was not made. For example, in the context of a risk to the fairness of

¹ (2005) 16 NTLR 186.

² at pp 203-204, paras [65]-[66].

a trial by publication of material that might be held inadmissible, the nature of that material will provide a guide to the court as to whether there is a realistic possibility of a risk being created. It will also assist the court in determining the degree of risk that might be occasioned to the fairness of the trial. In this process, it will be appropriate for the court to have regard to the measures available to a trial court to remove and ameliorate any prejudice that has been caused by publication.” ...

[17] As I have already pointed out, the nature and extent of the publications in the NT News contains a great deal of material which would be inadmissible at the defendant’s trial. This includes whatever may have been the relationship between the former Police Commissioner and the defendant; whatever may have been the relationship between the defendant and the Northern Territory Government staffer, Paul Mossman; the fact that charges of corruption have been laid against Mr Mossman and the defendant; the fact that of the 132 existing charges against the defendant 30 counts on a so-called representative basis would be presented with the remainder to be dealt with after the trial; the suggested web of deceit of which the defendant is allegedly the centrepiece; and the suggestion of other connections which she may or may not have had with certain ministers of the Crown. It is the nature of that material which provides a guide as to whether there is a realistic possibility of a risk being created that the defendant’s trial would be unfair or that the defendant might suffer undue prejudice or undue hardship in the presentation of her defence or in the conduct of her trial either in this Court or in the Court of Summary Jurisdiction. The same material indicates the degree of risk involved which I consider to be of some concern.

[18] As has been said on a number of previous occasions by this Court, the population base from which the jury in this trial will be empanelled is relatively small. The defendant, even if she was not widely known before her arrest, is almost certainly now someone whom has been brought to the attention of the community. These are factors which favour the making of the order sought. On the other hand, there is considerable public interest in this matter because of the charges which relate to the alleged misuse of a government-funded scheme for the assistance of pensioners, in which every taxpayer has a legitimate interest. Also, it is to be borne in mind that the matters complained of by the defendant are already in the public arena, although the details and inferences which might be drawn from the articles published in the NT News are likely to have faded in the public's memory by the time the trial begins. Further, the nature of the charges brought are not such as are likely to cause significant public odium and prejudice as is sometimes the case where the charges are, for example, of a sexual nature, particularly if the alleged victims are children. On the contrary, the facts upon which the prosecution will rely at trial are likely to be mostly about money and bookkeeping rather than any alleged salacious or abhorrent behaviour. In the whole of the circumstances I consider that appropriate directions to the jury concerning the need to consider the question of proof of the accused's guilt solely on the evidence will be sufficient, except perhaps in respect of one matter to which I will come shortly. In the result I

reject the defendant's application to prohibit the publication of her name in relation to this trial.

[19] There are two other matters which I need to briefly discuss. First, Mr Roper submitted that if I were inclined to make any order, that a carefully tailored order targeted at suppressing any specific evidence shown to be likely to cause specific harm, such as prohibiting photographs of the defendant in handcuffs, rather than a blanket order preventing publication of the defendant's name, together with appropriate instructions to the jury to try the case solely on the evidence which is brought before them and on nothing else, would be sufficient.

[20] However, there is no power under s 57(1)(a) of the *Evidence Act* to make an order suppressing the publication of photographs of the defendant. For s 57(1)(a) to be enlivened, the publication must relate to "any evidence given or used or intended to be given or used, in any proceeding before the Court...". There is nothing to show that the photograph in question fits that description. Although the word "evidence" was given a broad meaning by the Court of Appeal in *Nine Network Australia Pty Ltd v McGregor SM and Ors*,³ it does not include photographs of the defendant.⁴ Clearly it would not include any of the other matters complained of. That is not to say that the defendant is left without a remedy. This Court, in its inherent jurisdiction, can restrain the publication of any material, if an order is necessary to

³ (2004) 14 NTLR 24 at 35, [33]-[34].

⁴ *Nine Network Australia Pty Ltd v McGregor SM and Ors* (2004) 14 NTLR 24 at 38, [40].

prevent a threatened contempt of Court.⁵ However, the risk that must be proved is a substantial or real risk that the material would seriously interfere with the administration of justice in a pending proceeding, and thereby constitute a contempt of Court.⁶ In my opinion, the publication of the prejudicial material does not obviously meet this test, and without further evidence, I would not be inclined to make an order on this basis at this stage.

[21] The final question is whether I should make an order prohibiting the publication of the defendant's name in relation to the other proceedings pending in the lower Court, or in relation to the other outstanding charges which are not the subject of the present indictment. No order of that type has been sought so far, but this Court does have jurisdiction to make such an order if it is asked for, and the Court is of the opinion that such an order should be made to protect the integrity of the pending trial in this Court.⁷

[22] Although I have refused the defendant's application, I think it is timely to warn the media to be very careful and circumspect about the publication of the type of material about which the accused has complained. There should be no further publication of photographs of the defendant showing her in handcuffs or being placed in the back of a paddy wagon. There should be no reference to the other outstanding charges which are being held in abeyance

⁵ *General Television Corporation Pty Ltd v DPP (Vic) and Anor* 19 VR 18; 182 A Crim R 496 at [22]-[23]; *News Digital Media Pty Ltd and Anor v Mokbel and Anor* (2010) 30 VR 248 at 266, [68].

⁶ *Hinch v The Attorney-General for the State of Victoria and Ors* (1987) 164 CLR 15 at 28, 34, 55, 70, and 87.

⁷ *Australian Broadcasting Corporation v L and Anor* (2005) 16 NTLR 186 at 190, [9]; 195, [27]; 202, [64].

pending the outcome of these proceedings. There should be no suggestions that the defendant is the centrepiece of a web of deception or anything like that. There should be no reference to other suggestions of a scandalous kind and in particular as to the defendant's relationship with the former Police Commissioner, ministers or former ministers of the Crown or their staffers, there should be no attempt to link the defendant with suggestions of travel rorts by other travel agencies. Now that this matter is getting close to trial, I trust that the media will be responsible and careful not to publish any prejudicial and inadmissible material relating to the accused in this kind of way, otherwise the Court may well be inclined to take some action, which I trust will not prove to be necessary.

[23] The application is dismissed.