



## HIGH COURT OF AUSTRALIA

**Public Information Officer**

12 June 2008

### MURAT KURU v STATE OF NEW SOUTH WALES

Police officers who declined to leave Mr Kuru's home after he asked them to go and thereafter engaged in a physical struggle with him had committed trespass to both his person and his property, the High Court of Australia held today.

Early on 16 June 2001, six police went to a flat after receiving a report that a man and a woman were fighting. Mr Kuru and his then fiancée (now wife) had had a noisy argument but by the time police arrived the fiancée had left with Mr Kuru's sister. When police walked in the open door, two visiting friends were in the living room and Mr Kuru was taking a shower. After he came out of the bathroom, he allowed police to look around. Mr Kuru explained that his fiancée had left, wrote down his sister's telephone number, then asked police to leave. Despite repeated demands that police leave the flat, they declined to go. Mr Kuru jumped on to the kitchen bench, later saying this was to get their attention. He jumped off the bench, although it was disputed whether it was towards the police or away from them, but moved towards them with his arms outstretched and made physical contact with an officer. A violent struggle followed, and Mr Kuru was punched, sprayed with capsicum spray and handcuffed. He twice fell down stairs from the flat. Mr Kuru was locked in a police station cell for several hours wearing nothing but boxer shorts.

Mr Kuru brought proceedings in the NSW District Court against the State of NSW, claiming damages for trespass to his flat and his person and false imprisonment. He was awarded \$418,265, including aggravated and exemplary damages. The NSW Court of Appeal unanimously allowed an appeal by the State. It held that, despite Mr Kuru's withdrawal of permission to remain in his flat, the police were not trespassers when he first made contact with one officer. The Court held that police had both statutory and common law justification for remaining as they were investigating whether a domestic violence offence was committed. Mr Kuru appealed to the High Court.

The Court, by a 4-1 majority, allowed the appeal. The appeal was argued on the basis that the decisive question was whether the police were trespassing at the time of the physical encounter with Mr Kuru. The Court held that police had neither statutory nor common law justification to remain at the flat. Under section 357F of the *Crimes Act*, if invited by a domestic violence victim, police were entitled to enter or remain even if the occupier of the home objected. Section 357H provided that where police entered a house by invitation or with a warrant they were to stay only as long as needed to investigate whether an offence had been committed, to render aid to an injured person, to make an arrest, to prevent any further offence, and to establish whether firearms were present. The police had already inspected the flat and did not need to stay to speak to the fiancée. They were not invited to enter the flat by a victim of domestic violence. The Court held that their remaining at the flat after Mr Kuru had asked them to go was not authorised by sections 357F or 357H. Unless a victim of domestic violence asked police to stay, police had no authority to stay without permission of the occupant. If they had needed to stay they could have telephoned a magistrate for a warrant. The common law recognised that trespass on land in emergencies was justified, but in this case there was no danger to life or property. This was not a case where Mr Kuru's refusal or withdrawal of permission to enter or remain could be overridden. Common law powers to prevent a breach of the peace did not extend to entry to investigate whether a breach of the peace had occurred or whether one was likely. By the time police went to the flat there was no ongoing breach of the peace and none was threatened.

The case was remitted to the Court of Appeal for consideration of further issues about damages.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*