

**IN THE MĀORI LAND COURT OF NEW ZEALAND
TAITOKERAU DISTRICT**

A20120012689

UNDER Section 239, Te Ture Whenua Māori Act 1993

IN THE MATTER OF Te Tii (Waitangi) B3 Trust

BETWEEN TE TII (WAITANGI) B3 TRUST
Applicant

Hearing: 24 April 2013
26 June 2013
4 July 2013
(Heard at Kaikohe)

Judgment: 05 July 2013

RESERVED JUDGMENT OF JUDGE D J AMBLER

Introduction

[1] The primary issue raised by this application is whether Hinewhare Harawira's performance of a whakapohane directed at her whanaunga should disqualify her from being appointed as a trustee.

[2] In this decision I address the preliminary question of whether Ms Harawira's nomination should be taken back to a further AGM for endorsement.

Background

[3] Ms Harawira was nominated as a trustee at the 25 August 2012 AGM of the Te Tii (Waitangi) B3 Trust ("the Trust"). There were five trustee vacancies and four nominations. The minutes summarise the election process and record that all four nominations were "carried" in one resolution. There is no record of any particular objection to Ms Harawira's appointment.

[4] I appointed the other three trustee nominees at the first hearing held on 24 April 2013. There was no objection to their appointment. However, Hapeta Rameka, Billie Taituha and Joyce Baker objected to Ms Harawira's appointment.

[5] As Mr Rameka put it, "this was because of her indecent exposure to our kuia, mokopuna and our whanaunga Sir outside of the kaumatua and kuia flats of Te Tii Waitangi." Ms Taituha supported Mr Rameka's stance though she did not elaborate on the incident. Mrs Baker likewise opposed the appointment because of this "despicable behaviour" and also because she said Ms Harawira caused "havoc" at hui of the Trust and other hapū business at Waitangi.

[6] Because Ms Harawira was not present at the first hearing and had not been notified of the grounds of opposition, I adjourned the question of her appointment to a second hearing lest there be a breach of natural justice.

[7] The second hearing took place yesterday. Mr Rameka and Ms Taituha did not attend. One of the current trustees, Albie Apiata, said on their behalf that they had been given incorrect notice of the hearing and had turned up at Court the day before. However,

the previous day's Court hearing was in Kaitaia and there is nothing on the Court file to suggest that Mr Rameka or Ms Taituha were given notice that the hearing was on 3 July. Furthermore, no one else in Court suggested that their notice had been in error.

[8] Mrs Baker attended the second hearing and expressed once again her sense of offence at the whakapohane incident. However, it transpired that she had in fact not witnessed the incident but had heard about it from others. She reiterated her sense of outrage and said the incident was witnessed by Mrs Baker's fellow kuia doing raranga at the marae, and that she feels it caused great offence to the marae and her tupuna.

[9] Mrs Baker did not elaborate on the "havoc" attributed to Ms Harawira. In this respect I agree with Ms Harawira that she cannot be expected to respond to such generic complaints. I disregard that aspect of the opposition to her appointment.

[10] What then do we know of the whakapohane incident? Mr Rameka spoke of it in general terms only at the first hearing and did not return to Court to elaborate. He did produce a photograph – mercifully taken from a distance – which captures the moment. Mrs Baker could not assist the Court as she did not witness it. Wiremu Tane, the chairman of the Trust, was present on the day but he also did not witness it. Thus, those who apparently did witness the incident did not attend the second hearing to elaborate on their complaint, and those who did take offence did not witness it.

[11] Nevertheless, Mrs Harawira candidly acknowledged that the photograph was of her, and that she had indeed performed what she described as a whakapohane directed at some of her whanaunga. Importantly, the whakapohane occurred some days or weeks after the AGM on 25 August 2012. We know this because Ms Harawira said it was in the warmer months, and this timing fits with the eviction of Ms Taituha from the Trust's flat.

[12] The context of the whakapohane incident is that Ms Taituha had an employment and tenancy dispute with the Trust. This was the subject of an unsuccessful application under s 240 to remove Mr Tane as a trustee, which I dismissed at the first hearing. The dispute led to a three month protest in 2012 by Ms Taituha and her supporters which focussed on the flat she rented from the Trust. This is adjacent to Ms Harawira's flat. There was some form of occupation which resulted in the Trust obtaining relief from the

Tenancy Tribunal to evict Ms Taituha and her supporters. Ms Harawira says that on the day of the eviction she was the subject of considerable verbal and other abuse from her whanaunga who were supporting Ms Taituha. Ms Harawira's ultimate response to that abuse was the performance of the whakapohane.

[13] Ms Harawira says that this was a whakapohane and not a "brown-eye". Happily, I am not called upon to distinguish between the two, as Ms Harawira's evidence is uncontested. She says that this was performed as a matter of tikanga Māori, and that those who continue to take offence are ignorant of such matters of tikanga. Mrs Baker, on the other hand, says that such a display is unheard of at Waitangi and is a practice imported by Ms Harawira from outside of their community.

[14] Notwithstanding the debate over whether this gesture fits within the tikanga at Waitangi, Ms Harawira wisely acknowledged that those who witnessed her whakapohane took offence. She said she had spoken to some of those people and apologised, and otherwise made amends through assisting others with various kaupapa at Waitangi.

Discussion

[15] The objectors to Ms Harawira have had a fair opportunity to present their evidence and I am not prepared to receive any further evidence regarding the incident. The evidence is, nevertheless, clear that Ms Harawira exposed herself in what she describes as a whakapohane.

[16] The *Williams Dictionary* describes whakapohane in succinct terms as to "expose the person".¹ *He Pataka Kupu* provides a more detailed definition with two examples:

Ka āta pare atu i te tou ki te tangata, he mahi e tohu ana i te mutunga mai o te whakaparahako. Āna kitea mai a taihemahema mā, koia tērā. (i) *Ko te whakautu a Mihi ki tērā ko te tatai mai i tōna whakapapa i a Tamatekapua o Te Arawa waka, ka kī, ka teina kē a Mita ki a ia. Ko tana huringa atu tēnā i tana tuarā, kātahi ka whakapohane atu me te kī atu kia kaua a ia e whakaiti i te wahine, i te mea, i puta mai ia i ngā kūwhā o te wahine (TTR 3, 185).* (ii) *I tētehi o ngā hui, ka whakawhiua rāua ki te haka ngutu momoho, me te mutunga mai o te whakamanioro i te tangata, arā, ka whakapohane mai ngā wāhine ki a rāua (TTR 3, 214).*²

¹ H W Williams *Dictionary of the Maori Language* Seventh Edition (1991).

² Te Taura Whiri i te Reo Māori *He Pataka Kupu: te kai a te rangatira*.

[17] Obviously there are precedents for whakapohane in Māori culture. There are infamous incidents from earlier generations (such as the first example cited in *He Pataka Kupu*) and of more recent times (as per Te Ringa Mangu Mihaka). I have no doubt there are cultural mores that influence the circumstances in which it might be deployed – and such cultural considerations merit a greater dissertation than I can offer in this short decision. Nor do I need to measure this conduct against the criminal laws pertaining to public decency. I am only interested in the whakapohane incident in relation to the appointment of Ms Harawira as a trustee.

[18] The important point for present purposes is that whakapohane is a rarely used gesture of profound insult. As I interpret *He Pataka Kupu*'s definition, it is an insult that offers a climactic exclamation mark.

[19] Accepting the possibility of that cultural context, does it disqualify Ms Harawira from being a trustee?

[20] I only have evidence of Ms Harawira in relation to this one incident. Despite suggestions of Ms Harawira generally causing “havoc” in the affairs of Waitangi, no one has expanded on what that amounts to. I would certainly have deep reservations about appointing her if she routinely resorted to whakapohane or other similar gestures in response to abuse or other testing circumstances – it would suggest an inability to function in a measured and objective manner, which are qualities needed of trustees. But there is no such evidence.

[21] In deciding whether to appoint a trustee I am directed by s 222(2) of Te Ture Whenua Māori Act 1993 (“the Act”) to take into account factors in two respects:

- (2) The Court, in deciding whether to appoint any individual or body to be a trustee of a trust constituted under this Part of this Act,—
 - (a) Shall have regard to the ability, experience, and knowledge of the individual or body; and
 - (b) Shall not appoint an individual or body unless it is satisfied that the appointment of that individual or body would be broadly acceptable to the beneficiaries.

[22] There was no express challenge to Ms Harawira's "ability, experience, and knowledge", though the whakapohane issue does speak to her "ability" to be a trustee. I will address that in my final decision. But for the moment the incident is more relevant to the second arm of the test, that is, whether she would be "broadly acceptable to the beneficiaries".

[23] As noted earlier, the AGM where Ms Harawira was endorsed took place on 25 August 2012 and the whakapohane incident took place some time later. While the Court would ordinarily not be concerned with whether there is continuing support for a trustee nominee post an election, given the nature of the incident and the level of offence taken by some of the beneficiaries, I am left uncertain as to whether the AGM's endorsement still has currency.

[24] At the second hearing Mr Tane suggested that Ms Harawira's nomination should be taken back to the next AGM, which is scheduled for August 2013. That had an attraction for me. Ms Harawira was agreeable. However, her partner, Waireti Paora, felt that it was unnecessary given the apologies that had been given and accepted.

[25] I consider that it necessary for Ms Harawira's nomination to be taken back to the August 2013 AGM for endorsement. While the further delay in resolving the issue is unfortunate, the fact of the matter is that at this point in time I cannot determine the extent to which the whakapohane incident has affected the beneficiaries' support for Ms Harawira's appointment.

[26] The broad acceptability of a trustee to beneficiaries is important for any trust. But it is particularly important for this Trust. As I said to the parties in Court, in the seven years I have been a Judge, this Trust and the related Te Tii Waitangi Marae Trust have been before the Court on many occasions where disunity and factionalism have been the norm. It would be disastrous to appoint Ms Harawira if her support has evaporated because of her post-AGM conduct.

[27] But there is a further reason for sending Ms Harawira's nomination back to the beneficiaries that concerns tikanga. Although Ms Harawira may have addressed the individuals who took offence, it is not clear that she has addressed the collective. Ms

Harawira, the Trust and the beneficiaries can decide at the AGM whether in terms of tikanga Māori that has been achieved.

Outcome

[28] Accordingly, the application is adjourned to the September sitting of the Court at Kaikohe. I direct the trustees to seek the views of the beneficiaries at the August 2013 AGM regarding Ms Harawira's appointment as a trustee.

Pronounced at pm in Whangarei on Friday this 5th day of July 2013.

D J Ambler
JUDGE