IN THE MĀORI APPELLATE COURT OF NEW ZEALAND
WAIARIKI DISTRICT

A20120013572
APPEAL 2012/12

UNDER	Section 58, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	an appeal against an order of the Māori Land Court made on 8 October 2012 at 62 Waiariki MB 92 in respect of Te Ngae Farm Trust
BETWEEN	ARAMAKARAKA PIRIKA, HIWINUI HEKE, PIRIHIRA FENWICK AND WHARANGI WAETFORD Appellants
AND	TAI ERU AND RANGIMAHUTA EASTHOPE Respondents

Hearing:	13 February 2013 (2013 Māori Appellate Court MB 62-88) (Heard at Rotorua)
Court:	Chief Judge WW Isaac (Presiding) Judge L R Harvey Judge S R Clark Judge M J Doogan
Appearances:	M McKechnie and B Wall, counsel for the appellants C LaHatte and S Arcus, counsel for the respondents C Linkhorn and B Martin, counsel for the Crown
Judgment:	16 August 2013

JUDGMENT ON COSTS OF THE MĀORI APPELLATE COURT

Copies to counsel:
M McKechnie, Barrister, P O Box 1227 Rotorua 3040, mmckechnie@xtra.co.nz
B Wall, Sandford & Partners Barristers & Solicitors, P O Box 99 Rotorua 3040, brendan@sandfordpartners.co.nz
C LaHatte, Barrister & Solicitor, P O Box 10-909, Wellington, chris@lahatte.co.nz
S Arcus, Woodward Law, Barristers & Solicitors, P O Box 30-411, Lower Hutt 5040, info@mokoia.co.nz
C Linkhorn, Crown Law Office, P O Box 2858, Wellington, craiglinkhorn@crownlaw.govt.nz
B Martin, Crown Law Office, P O Box 2858, Wellington, bridgette.martin@crownlaw.govt.nz

[1] This appeal was dismissed for reasons given in our judgment of 28 March 2013. Counsel were invited to submit memoranda as to costs.

[2] Counsel for the respondents by memorandum dated 24 April 2013 seek costs calculated in accordance with category 2B of the High Court scale. Costs and disbursements are sought in the total sum of $6,585.70.

[3] By memorandum dated 13 May 2013 counsel for the appellants say in response that costs should lie where they fall. This is on the basis that there was a genuine ambiguity in the wording of the beneficiary clause which was the subject of the appeal. In the circumstances it was said that the trustees were duty-bound to seek clarification from the Court.

Law

[4] Section 79(1) of Te Ture Whenua Māori Act 1993 provides as follows:

> *79 Orders as to costs*
>
> *(1) In any proceedings, the Court may make such order as it thinks just as to the payment of the costs of those proceedings, or of any proceedings or matters incidental or preliminary to them, by or to any person who is or was a party to those proceedings or to whom leave has been granted by the Court to be heard.*

[6] The Court has a broad jurisdiction in relation to costs. A two-stage approach is required. The first question being should costs be awarded. If the answer is yes, then the Court must consider the quantum.

[5] The relevant principles are summarized in *Samuels v Matauri X Incorporation*[1]. These principles which are not in issue include:

a) The Court has an absolute and unlimited discretion as to costs. It is nonetheless a discretion to be exercised judicially, considering the correct principles, taking into account relevant matters and arriving at a decision that is not plainly wrong[2];

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[1] *Samuels v Matauri X Incorporation* (2009) 7 Taitokerau Appellate Court MB 216 (7 APWH 216).
[2] *Nicholls v Nicholls – Part Papaaroha 6B Block* (2011) Māori Appellate Court MB 64 (2011 APPEAL 64), at [10].

b) Costs normally follow the event;

c) A successful party should be awarded a reasonable contribution to the costs that were actually and reasonably incurred;

d) The Māori Land Court has a role in facilitating amicable, ongoing relationships between parties involved together in land ownership, and these concerns may sometimes make awards of costs inappropriate. However, where litigation has been conducted similarly to litigation in the ordinary Courts, the same principles as to costs will apply; and

e) There is no basis for departure from the ordinary rules where proceedings were difficult and hard fought, and where the applicants succeeded in the face of serious opposition.

As to quantum the Court held that:

a) The Court has a broad discretion;

b) The Court should look to what is just in the circumstances and in doing so should have regard to the nature and course of the proceedings; the importance of the issues; the conduct of the parties; and whether the proceedings were informal or akin to civil litigation;

c) If a party has acted unreasonably – for instance by pursuing a wholly unmeritorious and hopeless claim or defence – a more liberal award may be made;

d) Where the unsuccessful party has not acted unreasonably, it should not be penalised by having to bear the full party and party costs of his/her adversary as well as their own solicitor and client costs; and

e) The Court's discretion as to the level of contribution is a broad one but a reasonable contribution will seldom be as little as 10% and a contribution as large as 80% or 90% will seldom be reasonable on an objective analysis.

Discussion

[7] There is force in Mr McKechnie's submission that there was a genuine issue of interpretation on which trustees were divided. The responsible course was indeed to seek a ruling from the Court. It was not in fact Mr McKechnie's clients who made the original

application. What Mr McKechnie's clients did was appeal the decision of the Māori Land Court which we have now upheld. It is the costs in relation to the appeal which we are concerned with.

[8] The case both in the Court below and before us was run in a manner akin to civil litigation. In his judgment in the Court below Judge Coxhead did not address costs and as far as we are aware no order for costs has been made in respect of costs at first instance. For the reasons Mr McKechnie has touched upon we think it appropriate that costs should lie where they fall in the Court below. We see no reason however why costs should not follow the event in respect of the appeal.

[9] The ordinary principle is an award representing a reasonable contribution to costs actually and reasonably incurred.

[10] Counsel for the respondent has sought costs applying the High Court scale by analogy rather than seeking a contribution to actual costs. No information as to actual costs has been provided (other than in relation to travel costs). Rather than call for additional information we have decided to award costs at the level of $3, 000 plus disbursements. The disbursements claimed for travel between Wellington and Rotorua in the sum of $715.20 are allowed. We exercise our discretion in this way on the basis that such costs represent what we consider to be a reasonable contribution given the narrow focus of the issue for determination and the efficient conduct of the hearing itself, which required only a half day.

[11] Accordingly, pursuant to section 79 Te Ture Whenua Māori Act 1993, there is an order that the appellants pay the respondents costs in the total sum of $3, 715.20.

A copy of this decision is to be distributed to all parties.

W W Isaac (Presiding) **CHIEF JUDGE**	L R Harvey **JUDGE**	S R Clark **JUDGE**	M J Doogan **JUDGE**