

**IN THE MĀORI LAND COURT OF NEW ZEALAND
AOTEA REGISTRY**

A20150004234

UNDER Section 30 of Te Ture Whenua Māori Act 1993

IN THE MATTER OF Ngāti Rehua Ngāti Wai ki Aotea Trust Board

AND an application to determine representation of the islands and rock outcrops in the environs of Aotea (Great Barrier Island)

BETWEEN ERANA BAYNE
Applicant

AND TRUSTEES OF THE NGĀTI REHUA NGĀTI
WAI KI AOTEA TRUST
Respondents

Hearing: 15 April 2019, 2019 Chief Judge's MB 448-484
(Heard at Great Barrier Island)

Judgment: 11 December 2019

JUDGMENT OF CHIEF JUDGE W W ISAAC

Introduction

[1] On 17 July 2015, Erana Bayne filed an application pursuant to s 30(1)(b) requesting that the Court determine the most appropriate persons to represent the Ngāti Wai hapū of Great Barrier Island for the purposes of representation and proceedings to the Department of Conservation, Auckland City Council and treaty settlements. The current representative body is the Ngāti Rehua Ngāti Wai ki Aotea Trust Board (the Trust Board), who is the respondent in this matter.

[2] A judicial conference was held on 15 April 2019. Following this, parties were directed to file written submissions and evidence supporting their claims with the Court. Ms Bayne filed submissions on 25 April 2019. Submissions from the Trust Board were received on 13 June 2019, followed by submissions in reply from the applicant on 14 July 2019.

[3] The Crown has maintained a watching brief throughout proceedings. Mr Jason Gough for the Crown noted in the judicial conference that they support a way forward.¹

Background

[4] On 14 January 1986, the Ngāti Rehua Ngāti Wai ki Aotea Trust Board was incorporated under the Charitable Trusts Act 1957. It obtained a deed of mandate on 23 November 2009 to represent Ngāti Rehua Ngāti Wai ki Aotea in negotiations with the Crown regarding a comprehensive settlement of historical treaty claims. The Crown recognised this mandate on 16 December 2009. The Trust Board has since commenced negotiations with the Crown and signed an agreement in principle concerning the proposed settlement.

[5] Ms Bayne filed a s 45 application on 27 November 2014, a s 30 application on 9 March 2015 and an application for an interim injunction on 31 July 2015.

[6] Her application under s 19 for an interim injunction preventing the Trust Board from progressing negotiations with the Crown in treaty settlement claims was dismissed on 5 November 2015.²

¹ Chief Judge's MB 63-64 (2019 CJ 63-64).

² 115 Taitokerau MB 41 (115 TTK 41).

[7] Ms Bayne's s 45 application seeking to amend evidence presented to the Court that led to orders dated 23 February 1998 at 25 Auckland MB 212-242 was also dismissed for want of jurisdiction on 22 August 2016.³

Submissions of parties

Applicant's submissions

[8] The applicant submits that there have been errors in the whakapapa considered by the Court in 1998, which resulted in title being granted to Ngāti Rehua. She claims that there is no evidence that the Rehua of Tainui existed, rather it is actually based off the genealogy of two other Rehuas, the Rehua from the Manaia line and Rehua of Ngāti Wai. Therefore, the applicant submits that the Trust Board is not the most appropriate body to represent the tangata whenua of Aotea, as it is built on a false bloodline claim.

[9] The applicant claims that Ngāti Wai have exclusive rights over Aotea and its environs and seeks to settle the question of ownership in order to provide clarity for future generations. She submits that Ngāti Wai have occupied Great Barrier Island and its environs in unbroken succession since the early 1700s.

[10] The applicant also provides a list in her submissions, dated 25 April 2019, of a number of others who apparently oppose the authority and authenticity of the Trust Board. She submits that this opposition illustrates that the Trust Board is not conducting itself properly and is thus not the appropriate representative body.

[11] The applicant asks that a s 30 order be made in favour of a new Trust that is established under Ngāti Wai. She also requested that she be able to present her evidence in person, noting the difficulties of understanding complex whakapapa evidence on paper.

³ Chief Judge's MB 764 (2016 CJ MB 764).

Respondent's submissions

[12] The interim trustees of the Ngāti Rehua Ngāti Wai ki Aotea Trust Board responded to the applicant's submissions in the form of a memorandum, and an affidavit by Michael Beazley, a kaumatua and registered beneficiary of the Trust, received on 13 June 2019.

[13] The respondents submit that the applicant has not evidentially proved her claim as she did not produce evidence to prove how the Trust is an inappropriate representative body pursuant to s 30. They also submit that she has failed to produce evidence and extrapolate upon how Rehua of Mataahu is Rehua of Tainui and did not produce a timeline to show how Rehua of Mataahui was not part of the conquest of Aotea in the 1700s.

[14] The Trust Board submits that even if the applicant were able to prove her claim in evidence, it must fail for two reasons.

[15] Firstly, the Trust is properly mandated, supported and accountable to the people of Aotea, following the judicial principles in *Shaw*.⁴

[16] Secondly, there is a political process which the applicant should undertake before seeking judicial support. The applicant should raise these issues with the Trust Board in the first instance. An annual general meeting to appoint new trustees is due to occur prior to June 2020 and any representative issues can be raised by the applicant via this forum. Furthermore, the respondents submit that any issues of whakapapa are best addressed by the people, with judicial intervention only necessary if the process is flawed or there is some urgency.

[17] The Trust Board does not think judicial intervention is necessary where there is uncontested evidence on the key issue. Mr Beazley agreed with the applicant there is no Rehua of Tainui and said that the Trust does not claim to represent Rehua of Tainui. Mr Beazley submits that they all whakapapa to the same eponymous ancestor, Rehua, who himself was not Ngāti Wai, but through marriage and his descendants, has a connection to Ngāti Wai, which is why the Trust Board is named as such. He says that the Trust represents the people of Aotea, not Tainui, notwithstanding that there is a Tainui bloodline connection.

⁴ *Shaw v Ngati Huarere Ki Whangapoua - Ngati Pu* (2015) 113 Waikato Maniapoto MB 82 (113 WMN 82).

Submissions in reply

[18] The applicant filed a reply to the Trust Board and Mr Beazley's submissions on 14 July 2019. She reiterated her reasons for making the submission, in that the Trust Board is not the most appropriate entity to represent Aotea as it was established and maintained on a false bloodline claim and there is a lack of faith by owners in the Trust Board. Her submissions are detailed. She provides evidence to support her claims and responds to each point made by the respondents in their submissions. Overall, her reply is similar to her previous submissions.

[19] In regards to the respondents submission that she should follow internal dispute processes, she explains that she has made multiple attempts over the years to address the issue without success. She refers to a number of these instances.

[20] The applicant submits that the most appropriate people to represent the owners are the owners of the 17 Māori land blocks on Great Barrier Island, as they are direct descendants of the eponymous tupuna of Rehua and Hikihiki of Ngāti Wai ki Aotea. Thus, she states that she wishes to re-establish Ngāti Wai claim to the islands.

Law

[21] The relevant sections of Te Ture Whenua Māori Act 1993 are:

30 Maori Land Court's jurisdiction to advise on or determine representation of Maori groups

(1) The Maori Land Court may do either of the following things:

- (a) advise other courts, commissions, or tribunals as to who are the most appropriate representatives of a class or group of maori:
- (b) determine, by order, who are the most appropriate representatives of a class or group of Maori.

(2) The jurisdiction of the Maori Land Court in subsection (1) applies to representation of a class or group of Maori in or for the purpose of (current or intended) proceedings, negotiations, consultations, allocations of property, or other matters.

(3) A request for advice or an application for an order under subsection (1) is an application within the ordinary jurisdiction of the Maori Land Court, and the Maori

Land Court has the power and authority to give advice and make determinations as the Court thinks proper.

30A Intent of sections

The intent of section 30 and sections 30B to 30I is—

- (a) to enable and encourage applicants and persons affected by an application under section 30 to resolve their differences concerning representation, without adjudication; and
- (b) to enable the Chief Judge to facilitate, as far as possible, successful resolution of differences surrounding an application by the persons affected, without adjudication.

[22] The Court in *Ngāti Pāoa Iwi Trust v Ngāti Pāoa Iwi Trust Board* summarised the case law under s 30 and emphasised that orders should not be made lightly:⁵

[...] In addition, the Court should keep in mind that a s 30 order should not easily be given. Though a s 30 order may resolve a dispute, it is in fundamental opposition to the tribe's right to appoint its own representatives. Placing one party in a position of strength by way of a court order is unlikely to be the most acceptable solution to the iwi. Therefore, traditional means of dispute resolution should be encouraged.

[73] The cases indicate that the issues for guiding whether the Court should exercise its discretion under s 30 are as follows: (a) is there an urgent issue that requires consultation or negotiation?; (b) is it not immediately clear who should undertake a representative role?; (c) if it is, has the person or group purporting to fulfil that role demonstrated some of the factors outlined in *Shaw v Ngāti Huarere ki Whangapoua*; (d) is there clear evidence that the person or group has been undertaking representative activities?; (e) is there any utility in making the order?; (f) does the order provide clarity for groups seeking to enter discussions with that group of Māori?; and (g) the issue cannot be resolved outside the Court.

[74] We agree with these decisions and consider that any advisory or adjudicatory decision by the Court under s 30(1)(b) should be a remedy of last resort. [...]

Discussion

[23] The two main elements of the applicant's claim are that the Trust Board is not the most appropriate representative entity as it is built on a false bloodline claim, and that the Trust does not have the support of the people. Both of these claims are beyond the scope of a s 30 inquiry for the reasons that follow.

⁵ *Ngāti Pāoa Iwi Trust v Ngāti Pāoa Iwi Trust Board* (2018) 173 Waikato Maniapoto MB 51 (173 WMN 51) at [72-74].

[24] Ms Bayne claims that the Trust Board is not the best representative body as it is built on a false bloodline claim, with issues over the identity of the tūpuna Rehua. The applicant's grievance stems from a decision by Judge Spencer made on 23 February 1998, who made orders that:⁶

(a) Pursuant to s.131/93 (formerly under s.161/53 in the application by John da Silva), the Court determines the status of all the islands and rock outcrops in the environs of Aotea to which title has not previously been determined, to be Māori customary land.

(b) Pursuant to s.132/93, the Court determines the owners of the islands and rock outcrops in (a) above to be Ngati Rehua, to hold the same as kaitiaki for themselves and, in accordance with the tikanga of whanaungatanga, for Ngati Wai ki Aotea and Marutuahu ki Aotea.

[25] The applicant brought a s 45 application to amend the evidence given in respect of these orders. I dismissed this application for want of jurisdiction on 22 August 2016.⁷ It would appear that the applicant is now using this s 30 application to re-litigate the issue raised in her s 45 application. Section 30 is not a rehearing or appeal provision and can not be used in this manner.

[26] The purpose of a s 30 application is to determine the most appropriate representative for a specified purpose, not to resolve historical grievances or relitigate issues before the Court. Similarly, and as has been set out in other judgments under s 30 including *Ngāti Pāoa Iwi Trust v Ngāti Pāoa Iwi Trust Board*, the Court is not the ideal forum to resolve whakapapa disputes. To repeat what is set out in that decision, "placing one part in a position of strength by way of a court order is unlikely to be the most acceptable solution to the iwi" and therefore traditional means of dispute resolution should be encouraged.⁸

[27] The applicant's second element of her claim concerns issues with the Trust Board. Any issues the applicant has with the Trust Board are also beyond the scope of a s 30 inquiry. The annual general election next year will allow new trustees to be appointed and as the respondents mentioned, will provide an opportunity for the applicant to have representation issues raised at that meeting. These issues can and should be resolved without adjudication

⁶ 25 Auckland MB 212-242 (25 AT 212-242).

⁷ *Bayne - Great Barrier Island* [2016] Chief Judge's MB 764 (2016 CJ 764) at [13].

⁸ Above n 5 at [72].

by the Court and as stated in *Ngāti Paoa Iwi Trust*, the Court's intervention is in fundamental opposition to the tribe's right to appoint its own representatives.⁹

Decision

[28] For the reasons set out above, the application must fail and it is now dismissed in terms of s 30C(6)(b) of Te Ture Whenua Māori Act 1993.

[29] If the applicant is still aggrieved with the management of the Trust following the next annual general election, she should seek legal advice in relation to alternative processes for review of the Trust.

The Case Manager is to distribute a copy of this decision to all parties.

Dated at Wellington this 11th day of December 2019.

W W Isaac
CHIEF JUDGE

⁹ At [72].