IN THE MĀORI LAND COURT OF NEW ZEALAND
AOTEA DISTRICT

A20190006784

UNDER	Rule 4.10(3), Māori Land Court Rules 2011
IN THE MATTER OF	Allotments 170-176 Parish of Manurewa and orders made at 158 Taitokerau MB 248-257 on 14 September 2017 and a decision of the Registrar to refuse applications for filing
	STEWART REUBEN Applicant

Hearing: On the papers

Judgment: 15 January 2020

JUDGMENT OF CHIEF JUDGE W W ISAAC

Introduction

[1] On 18 June 2019, an application was received from Stewart Reuben seeking to review a decision of the Registrar dated 7 May 2019.

[2] In that decision, Deputy Registrar Majurey refused to accept the following:

(a) Two notices of appeal;

(b) An application for leave to appeal out of time;

(c) An application to the Chief Judge under s 45 of Te Ture Whenua Māori Act 1993 (the Act); and

(d) A request to waive the filing fee.

[3] Mr Reuben maintains that his applications were filed in accordance with both legislation and the common law and ought to be accepted by the Registrar.

Background

[4] On 17 August 2016, Hinton J of the High Court made an order for profit forfeiture in relation to unlawful benefit to the sum of $1.17 million.[1] The order was against property in which Valentine Nicholas and his fellow respondents had an interest.

[5] On 14 September 2017, Judge Armstrong determined three separate applications by Tuari Hetaraka and others in relation to the Otuatua Stonefields (A20160006578), the site of the former Tamaki Girls College (A20160005969) and an unspecified area of land referred to as Ngāti Tai whenua (A20160005924).[2] The applicants sought to have the land determined as Māori customary title and subsequent titles amended or cancelled accordingly, and for injunctions to be granted preventing dealing with the land. For reasons of indiscernible pleadings and lack of jurisdiction, Judge Armstrong struck out all the applications.

[6] On 8 December 2017, Judge Coxhead dismissed an application by Valentine Nicholas to change the status of four blocks of land at Maketu from General land to Māori freehold land.[3] The application was opposed by the Crown as the properties were those which Hinton J had forfeited as part of Criminal Proceeds order described above. Two of the blocks were forfeited at the time of the hearing before Judge Coxhead and two had been sent by the Court of Appeal to be reconsidered by Hinton J. Regardless, without signed consent from those parties holding encumbrances over the land in question, the application did not meet the requirements of r 11.1 of the Māori Land Court Rules 2011 (the Rules) and was accordingly dismissed.

[7] On 18 April 2019, Mr Reuben filed three applications with the office of the Chief Registrar of the Māori Land Court. The first application was under s 45 of the Act and sought

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[1] *Commissioner of Police v Nicholas & ors* [2016] NZHC 1913.
[2] *Hetaraka v Auckland Council – Allotments 170-176 Parish of Manurewa* (2017) 158 Taitokerau MB 248 (158 TTK 248).
[3] 176 Waiariki MB 273-280 (176 WAR 272-280).

an exercise of the Chief Judge's powers to amend or cancel the orders made by Hinton J in the High Court.

[8] The second was an appeal against the orders of Judge Armstrong in relation to Ngāti Tai Whenua. Mr Reuben maintained the Court was bound to investigate and determine whether customary title existed in relation to that land and the Judge's refusal to do so limited the parties' right to a fair hearing. In addition, Mr Reuben submitted the failure of discovery was the fault of the respondents to the application and should not have counted against the applicants.

[9] The third application was an appeal against the decision of Judge Coxhead dismissing the application to change the title of the Maketu blocks. Mr Reuben once again submitted that the Court was bound to investigate applications regarding customary title and that the Court ought to have looked further into the title instead of taking for granted that the land was now in general title. It was further submitted that the Criminal Proceeds (Recovery) Act 2009 could not legally be used to extinguish native title to land and cannot be applied to Māori land in general. In addition, Mr Reuben set out in his application that he sought an interim injunction to continue until final orders issued.

[10] Additionally, Mr Reuben filed for a fee waiver as he is the recipient of a benefit from Work and Income New Zealand. He also sought leave to appeal out of time on the basis that the Statute of Limitations Act 2010 does not apply to investigations of customary title and neither does s 52 of the Land Transfer Act 2017. Mr Reuben also stated that he was unable to file earlier as he had proceedings in other courts and was participating in protests and petitions which were occupying his time.

[11] Deputy Registrar Majurey responded to the applications on 7 May 2019, noting that none of the applications had been accepted and they were therefore returned to him. The reasons given for refusing to accept the applications were:

(a) They did not set out the grounds of appeal and relief sought as required under r 8.8 of the Rules;

(b) They were not filed within two months of the date on which the orders appealed from were issued;

(c) The application for leave to file out of time did not set out the reasons for delay and the grounds on which the extension was sought;

(d) An injunction must be filed separately and in the registry of the district in which the land is situated;

(e) Appeals to the Supreme Court must be addressed to the Supreme Court; and

(f) The Chief Judge does not have power to amend orders not made in the Māori Land Court and therefore has no jurisdiction in relation Hinton J's decision;

The application

[12] As set out in his application for review, first received by the Court on 18 June 2019, Mr Reuben maintains the Registrar incorrectly refused to accept his applications. The grounds for appeal were set out in detail in the application on both sides of the form and with relevant annexures included and therefore the Registrar was wrong to reject them for failing to set out the grounds of appeal.

[13] Mr Reuben rejects any assertion that his applications were filed out of time and submits that there is no statutory support for this ground of rejection. He refers to s 28(4)-(5) of the Limitation Act 2010 which states that its jurisdiction does not extend to Māori customary or to the Māori Land Court and Māori Appellate Court.

[14] It is submitted that the Registrar was incorrect to state that the applications included an injunction and an application to the Supreme Court, as, in fact, they did not. In addition, Mr Reuben states that the jurisdiction of the Māori Land Court does indeed extend to allowing the Chief Judge to consider the decision of the High Court. As basis for this submission, Mr Reuben states that the Māori Land Court must consider any case regarding the rights of Māori and that s 61(2) of the Act allows the Māori Appellate Court to give its opinion on a matter to the High Court. He states that such an act under s 61(2) is binding on the High Court.

[15] Mr Reuben goes on to refer to *Proprietors of Wakatu v Attorney General*, particularly "Māori remained proprietors of the land until native title was cleared by investigation".[4] The refusal to accept his applications is, according to Mr Reuben, an attack of native title rights. He submits that Māori rights and interests in land have not been properly investigated and their rights to such were recognised under Te Tiriti o Waitangi.

[16] On 3 December 2019, the Court received further correspondence from Mr Reuben, once again stating the grounds on which he seeks orders. In addition, Mr Reuben notes that land belonging to Mr Nicholas which was subject to the forfeiture order had been listed for sale. Mr Reuben requests, in addition to a decision on the current matters, that an interim injunction issue to prevent sale of the land.

Law

[17] The Registrar's power to refuse an application for filing is set out at r 4.10 of the Rules:

> **4.10 Registrar may refuse to accept proceeding or other document for filing**
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> (1) A Registrar may refuse to accept for filing a proceeding or other document for any of the following reasons:
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> (a) it is illegible:
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> (b) if in electronic form, it cannot be opened:
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> (c) it does not comply with a requirement of these rules:
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> (d) it is not in the correct form:
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> (e) it is not accompanied by the prescribed fee:
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> (f) it is not accompanied by other information or documents required by these rules to be filed with it.
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> (2) The Registrar must advise the person filing the proceeding or other document that it is refused and must state the reason for the refusal.
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> (3) The party or person filing a proceeding or other document that has been refused for filing by the Registrar may apply in writing for the review of the Registrar's decision by a Judge, and a Judge must then determine the matter.

[4] *Proprietors of Wakatu v Attorney General* [2017] NZSC 17 at [116].

[18] Additionally, r 8.8 of the Rules concerns appeals from decisions of the Māori Land Court, and sets out when they must be filed:

> **8.8 Notice of appeal**
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> A notice of appeal must—
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> (a) be in form 13; and
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> (b) set out full details of the grounds of appeal and the relief sought, or have attached to it a statement that sets out the basis of the appeal in sufficient detail to inform the Court and any other party what the basis of the appeal is; and
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> (c) be signed by the appellant or the appellant's solicitor; and
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> (d) be filed—
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> (i) within 2 months after the date of the minute of the order that is appealed from; or
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> (ii) if leave has been granted to appeal out of time under rule 8.14, within the extended time allowed.

[19] The Chief Judge's special powers are set out in s 44(1) and "court" as used there means the Maori Land Court or the Maori Appellate Court or both as set out in the interpretation section:

> **44 Chief Judge may correct mistakes and omissions**
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> (1) On any application made under section 45, the Chief Judge may, if satisfied that an order made by the court or a Registrar (including an order made by a Registrar before the commencement of this Act), or a certificate of confirmation issued by a Registrar under section 160, was erroneous in fact or in law because of any mistake or omission on the part of the court or the Registrar or in the presentation of the facts of the case to the court or the Registrar, cancel or amend the order or certificate of confirmation or make such other order or issue such certificate of confirmation as, in the opinion of the Chief Judge, is necessary in the interests of justice to remedy the mistake or omission.

[20] I have previously considered the limits of the Registrar's power under r 4.10:[5]

> Importantly, the Registrar's power to refuse an application under r 4.10(1) is an administrative "threshold decision" to determine whether an application complies with the administrative requirements of the Rules.[7] It is not required at this point in proceedings that the applicant has provided sufficient information and a persuasive argument to make out his case, or even that his case is clearly set out. So long as the

[5] *Moore – Waitara East Section 81 B* [2018] Chief judge's MB 842 (2018 CJ 842) at [18].

> information required by r 8.2 is set out in the application, it should be accepted. It is then during the substantive hearing that the merits of the case can be heard.

Discussion

[21] As set out above, the question for me is whether or not the applications filed comply with the administrative requirements of the Rules.

[22] In relation to the appeals filed against the decisions of Judge Armstrong and Judge Coxhead, Mr Reuben maintains that the Court is bound to investigate and determine whether customary title exists and that the Judges' refusal to do so limited his right to a fair hearing. Unfortunately, this is not the case for either appeal. Although the decision of Judge Armstrong arose from an application under s 18(1)(h) to determine whether the land is in Māori title, there is no requirement under that section that a determination be reached. Like any ordinary section of the Act, it is subject to interlocutory applications, and in this case was struck out. An appeal of that decision would need to set out why the application for strike out was not properly decided and Mr Reuben has failed to do so. As regards the decision of Judge Coxhead, that application was made under s 133 to change General land to Māori freehold land. There is no requirement under s 133 for an investigation of the title.

[23] In terms of r 8.8, the grounds of appeal and relief sought are required to be set out. The pleadings made it difficult to ascertain what the grounds of appeal are other than the Court is bound to investigate the title. No reasons were given as to why. Furthermore, the appeal was filed 16 months late for Judge Armstrong's decision and 14 months late for Judge Coxhead's decision. Rule 8.8(d)(i) provides that an appeal is to be filed within two months of the decision. This did not happen.

[24] Mr Reuben, however, both filed an application for leave to file late and rejected any assertion that the appeal was filed late. He refers to the Limitations Act as support and states that the jurisdiction of the Limitations Act does not apply to the Māori Land Court.

[25] The important points are that the appeals were late and Mr Reuben did not comply with the Rules of the Court. His application to apply out of time did not assist him.

[26] In relation to the s 45 application, this concerns an order of the High Court. Section 44 of the Act applies only to orders of the Māori Land Court of the Registrar of the Māori

Land Court. Further, r 8.2(2) requires the applicant to refer to the Māori Land Court orders to which the s 45 application is directed. This was not complied with and could not be complied with as there are no Māori Land Court here to consider.

[27] Finally, none of the applications were accompanied by the necessary fee. The Registrar and the Court has a discretion to refuse applications for failing to file a fee, notwithstanding an application for fee waiver.

[28] In this case, I consider the Registrar was within her powers under r 4.10(e) to reject the applications for failure to pay the fee.

[29] For all the reasons set out above, the decision of the Registrar of 7 May 2019 is upheld and the review application is dismissed.

Decision

[30] The review is completed, and the decisions of the Registrar upheld.

Dated at Gisborne this 15th day of January 2020

W W Isaac
CHIEF JUDGE