

**I TE KOOTI PĪRA MĀORI O AOTEAROA  
I TE ROHE O TĀKITIMU**

*In the Māori Appellate Court of New Zealand  
Tākitimu District*

**A20210005623  
APPEAL 2021/3**

WĀHANGA  
*Under*

Section 58, Te Ture Whenua Māori Act 1993

MŌ TE TAKE  
*In the matter of*

Tataraakina C

NIGEL BAKER  
Te kaitono pīra  
*Appellant*

Nohoanga:  
*Hearing*

12 August 2021, 2021 Māori Appellate Court MB 302-307  
(Heard at Hastings)

Kooti:  
*Court*

Judge P J Savage (Presiding)  
Judge C T Coxhead  
Judge M P Armstrong

Whakataunga:  
*Judgment date*

24 August 2021

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**TE WHAKATAUNGA Ā TE KOOTI**  
*Judgment of the Court*

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## **Hei tīmatanga kōrerō**

### *Introduction*

[1] The Tātaraakina C block is administered by the trustees of the Tātaraakina C Trust. Mr Baker is a beneficiary of that trust. Last year, Mr Baker filed an application seeking an injunction to prevent the trustees from initiating a 1080 aerial drop on the land. On 24 December 2020, Chief Judge Isaac dismissed that application.<sup>1</sup> Mr Baker appeals Judge Isaac's decision.

## **He aha te ture?**

### *What legal principles apply?*

[2] This is an appeal against an exercise of discretion. In such cases, the appeal criteria are different from that of a general appeal. In particular, the appellant must demonstrate that the Court below:

- (a) Erred in law or principle;
- (b) Took into account an irrelevant matter;
- (c) Failed to take into account a relevant matter; or
- (d) Was plainly wrong.

## **E whakaae ana mātau ki te pira?**

### *Should we uphold the appeal?*

[3] Judge Isaac found that the trustees were acting lawfully and within the powers of the trust in conducting the 1080 programme. He determined that there was no unlawful act causing injury to the land and so the injunction application must fail.

[4] Judge Isaac's findings are undoubtedly correct. This is consistent with the orthodox principles of trust law as noted by this Court in the decision of *Eriwata*.<sup>2</sup> It is for the trustees to manage and administer the land. The trustees have to make decisions concerning the use

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<sup>1</sup> *Baker v Hemana - Tātaraakina C* (2020) 87 Tākitimu MB 100 (87 TKT 100).

<sup>2</sup> *Eriwata v Trustees of Waitara SD Sections 6 & 91 Land Trust* (2005) 15 Aotea Appellate MB 192 (15 WGAP 192).

of the land and they are often hard decisions. A meeting of owners cannot override the decision of the trustee. Judge Isaac applied these principles and there was no error in his approach.

[5] Mr Baker does not challenge this finding or the application of these principles. He accepts that the trustee had authority to authorise the 1080 programme. Mr Baker brings the appeal to challenge that part of Judge Isaac's decision concerning the level of owner support. Judge Isaac found as follows:<sup>3</sup>

[48] To the issue of owner support, I am not satisfied that Mr Baker's submissions established there was overwhelming dissent by owners to this proposal. At the special meeting held in August 2020, 18 owners voted against the proposal and 15 voted in favour. These results show that there is little difference between the support and opposition. I also consider it relevant that there are 1,143 listed owners, and of those owners only a small proportion have voted. The Trustee must consider what will be in the best interest of all owners, not just those who vote when making decisions on behalf of the Trust. The Court has heard comprehensive evidence from owners and representatives of both Tataraaikina C and neighbouring blocks who have indicated their support for the aerial drop proposal. These owners emphasised the combined effort required across the board for the eradication of pests to stamp out bovine TB throughout the Hawkes Bay.

[6] Mr Baker contends that Judge Isaac undermined the views of those owners who engaged in the meetings by taking into account those owners who had not engaged. He submits this sets a dangerous precedent as other judges may rely on absent owners to support their decisions. Mr Baker argues that the meeting of owners in this case was even more important as the Court directed that a meeting was to be held.

[7] Mr Baker is wrong in both fact and law. Firstly, Judge Isaac's comments in paragraph [48] of his decision are clearly obiter. Judge Isaac dismissed the application on the basis that there was no trespass or unlawful injury to the land. He then went on to consider the remaining arguments, including the level of owner support and opposition. However, that is not the basis upon which he decided the matter.

[8] Mr Baker suggests that the Court was bound to uphold the views of the owners as expressed at the meeting particularly given that the meeting was convened by the Court.

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<sup>3</sup> *Baker v Hemana – Tataraaikina C* (2020) 87 Tākitimu MB 100 (87 TKT 100).

This argument has no merit. In *Hemi v Proprietors of Mangakino Township Inc* the Court considered the effect of a vote by beneficial owners.<sup>4</sup>

In a legal sense also, the voting is of doubtful use. Voting by beneficiaries is not orthodox in general trust law. It has been grafted onto the Trust system by this Court to make the structure conform to an extent with the Incorporation model and to give owners the opportunity to have their say. The result however except in some very specific circumstances does not decide anything. Voting is a device for making the views and the strength of those views known to the Trustees and the Court. It gives the owners a venue and structure for discussion.

...

The Trustees must make the decisions of Trust business and cannot be dictated to by the owners. They cannot delegate their decision-making responsibility to a vote at a meeting of owners. This is particularly so in that there are unlikely to be all the owners at the meeting and the Trustees have a duty to all of the owners and not just those present at the meeting. In fact owners present at meetings of Trusts such as this rarely represent by share or number more than a very modest proportion.

[9] Judge Isaac considered the views of the owners in relation to the 1080 programme. He found that there was little difference between the level of support and opposition. He also took into account that a small number of owners had engaged in relation to the total number of owners in the block. Those comments are factually correct. He was entitled to take those factors into account but he was not bound to follow the views of the owners as expressed by a majority vote.

### **Whakataunga**

#### *Decision*

[10] Mr Baker has not demonstrated that Judge Isaac erred in law or in principle, took into account an irrelevant matter, failed to take into account a relevant matter, or was plainly wrong. The appeal is dismissed.

I whakapuaki i te 5:15pm i Te Taitokerau, te 24 o ngā rā o Here-turi-kōkā i te tau 2021.

P J Savage (Presiding)  
**JUDGE**

C T Coxhead  
**JUDGE**

M P Armstrong  
**JUDGE**

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<sup>4</sup> *Hemi v Proprietors of Mangakino Township Inc* (1999) 73 Taupo MB 30 (73 TPO 30).