

**I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O TE WAIARIKI**

*In the Māori Land Court of New Zealand
Waiariki District*

A20220003922

WĀHANGA <i>Under</i>	Section 19, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Kawerau A4
I WAENGA I A <i>Between</i>	MARIA DAWSON, ROBERT FOX, PAORA PAATU HUNIA AND NEWTON THEODORE KAREKARE AS TRUSTEES OF KAWERAU A4 AHU WHENUA TRUST Ngā kaitono <i>Applicants</i>
ME <i>And</i>	CHRISTIAN CROWN, DOREEN PARAHA AND TE AHO PARAHA Ngā kaiurupare <i>Respondents</i>

Nohoanga: 17 March 2022
Hearing (Heard at Rotorua via Teleconference)

Mā te waea i Rotorua
Appearances N Coates for Applicants
C Crown in person

Whakataunga: 25 March 2022
Judgment date

TE WHAKATAUNGA Ā KAIWHAKAWĀ T M WARĀ
Judgment of Judge T M Wara

Hei timatanga kōrero

Introduction

[1] The applicants, being the trustees of Kawerau A4 Ahu Whenua Trust, also known as Rotopotaka Ahu Whenua Trust (“the Trust”) seek a permanent injunction pursuant to s 19 of Te Ture Whenua Maori Act 1993 (“the Act”):

- (a) Permanently restraining the respondents Te Aho Paraha, Christian Crown and Doreen Paraha from residing on the land; and
- (b) Requiring that Te Aho Paraha, Christian Crown and Doreen Paraha remove all objects and structures that they have taken onto and erected on the land.

[2] Te Aho Paraha, Christian Crown and Doreen Paraha (“the respondents”) are residing on and have erected a structure on the land.

[3] The issue for determination is whether an injunction should be granted to prevent the respondents from trespassing on the land.

Kōrero whānui

Background

[4] Kawerau A4 is 183.7793 hectares of Māori freehold land and situated at 6A Kawerau Road, Kawerau. The land is vested in the trustees of the Trust, who administer the land on behalf of 480 beneficial owners.

[5] On or about 24 January 2022, the respondents commenced occupation of the land without the authority of the trustees. In addition to their occupation they have moved the following objects onto the land: a tent, caravan, vehicle, shipping container and fruit trees.

[6] The trustees issued trespass notices dated 27 January 2022 and 4 February 2022 on the respondents, which were served by individual trustees. Although the respondents were requested to leave the land immediately, they did not leave.

[7] The trustees instructed Kāhui Legal to act for them, and on 18 February 2022 a letter was sent the respondents. In that letter, the trustees lawyer explains ownership, rights of beneficial owners as well as trespass, and requests the respondents immediate departure from the land. The respondents were advised that if they do not depart the land by 25 February 2022, then the trustees will take legal action.

[8] The respondents did not leave the land and an application for an urgent injunction was filed with the Court.

Ko te hātepe ture o te tono nei

Procedural history

[9] On 8 March 2022 the applicants applied to the Court for an urgent injunction. The application included a sworn affidavit of Maria Dawson, and a memorandum of counsel which set out the reasons for the application and the relevant law.

[10] On 10 March 2022 the following directions were issued by the Court:

- (a) This application is to be set down for an urgent hearing on 17 March 2022 at 10am to be heard by way of teleconference.
- (b) Service on the respondents are to be effected by way of email.
- (c) Notice of the hearing to the applicants and respondents by way of email.

[11] On the same day, counsel for the applicants confirmed that the respondents had been served with both the application and supporting documents on 8 March 2022, and notice of the hearing on 10 March 2022.

[12] The Court received a number of documents filed in response to the application on 17 March 2022 between 9:00am and 9:45am, just prior to the hearing. While some of these documents may have been emailed to the Court on 16 March 2022 at 4:42pm, it was to the generic Waiariki email addresses as opposed to the case manager who had been liaising directly with Mr Crown. In any event, Ms Coates for the applicants advised that she had not been served with a copy of these documents. Therefore, the application was adjourned until

10:30am to provide Ms Coates with an opportunity to read through the documents and advise whether a further adjournment was sought.

[13] When the hearing was reconvened Ms Coates confirmed that, while she did not have an opportunity to read through all of the documentation, she was ready to proceed. Therefore, Ms Coates presented the case for the applicants.

[14] When it was Mr Crown's opportunity to respond, he was argumentative, did not accept the legal title of the land, challenged the jurisdiction of the Court, and refused to be quiet when directed so by the Court. As the hearing was conducted by way of teleconference, Mr Crown's behaviour made it impossible to continue, and hearing was brought to an end. While Mr Crown may argue that the process was unfair, he did have an opportunity to present his case and spent considerable time vocalising his views. If he had conducted himself in this manner in open court, he would have been held in contempt.

[15] At the hearing the parties were advised that a determination would be made taking into account the information before the Court.

Ngā kiritake me ō rātou ake whakapono

The parties and their positions

Position of the applicants

[16] The applicant says that as trustees they are in lawful possession of the land. They have not granted authority to the respondents to be on the land, that the respondents are not beneficial owners of the land, and they have issued trespass notices requiring the respondents immediate departure from the land. As the respondents remain on the land, the trustees seek an injunction to enforce their rights of possession.

Position of the respondents

[17] The respondents' position is articulated through a number of documents filed with the Court, including but not limited to an email headed 'statement of claim'; an application for an occupation order; and the statements of Melanie Paraha, Josephine Hepi and Kahurangi Hepi that are set out in various emails.

[18] The starting point is that the respondents do not accept the legal title of the land as Kawerau A4, and assert that the land is part of Te-Ika-a-Māui. Te Aho Paraha says, in the statement of claim, that he is a descendant of Raimona Paraha and Hineira Apihai who were original owners in the parent block to Kawerau A. As descendants, the respondents assert that they have an inherent right to live on the land. As the respondents do not accept the legal title to the land, they do not accept that the Trust has any authority over the land.

[19] The respondents rely on two applications that they say are now before the Court. The first is an application to the Chief Judge pursuant to s 45 of the Act, seeking that an error or mistake be corrected that will lead to the return of interests to Raimona Paraha and Hineira Apihai in the land that was known as Lot 39A Section 3E also known as Kawerau A Block. The second is an application for an occupation order pursuant to s 328 of the Act, where reliance is placed on a meeting held on 2 February 2022 whereby a resolution was moved to support Te Aho Paraha building a papakainga on the land. As to the status of these applications, the Court confirms that the application for an occupation order is in the inwards mail register of 4 March 2022, however it has not finished the acceptance and review process of the Court. With regard to the s 45 application, it has not been filed but Mr Crown advises that he intends to do so.

[20] The respondents say that because of these two applications, and because of their inherent right to be on the land, that an injunction should not be granted. In addition, the respondents seek an interlocutory order against the applicants and their counsel to cease the current proceedings.

Kōrero taunaki

Evidence

[21] The applicants rely on the sworn affidavit of Maria Dawson dated 8 March 2022 which sets out the efforts undertaken by the Trust to have the respondents leave the land. Attached to the affidavit, amongst other matters, are the trespass notices dated 27 January 2022 and 5 February 2022, and from Kāhui Legal dated 18 February 2022 regarding illegal occupation. The evidence also addresses the impacts of the trespass on the Trust, where Mrs

Dawson states that the aggressive and hostile behaviour of the respondents has caused stress on the trustees and the beneficial owners.

[22] The respondents rely on three statements that were submitted to the Court. The first is the statement of Melanie Paraha, whose evidence is in relation to the service of documents by trustee Joe Karekare. Ms Paraha asserts that Mr Karekare was aggressive in the way in which he addressed herself and her brother Te Aho Paraha. This evidence was taken as read, and Ms Coates did not have any questions. The second statement is from Josephine Hepi, whose evidence touches on the character of Te Aho Paraha and the alleged views of other owners. Ultimately this evidence includes hearsay and has little relevance to the issues before the Court. The third statement is from Kahurangi Hepi, whose evidence touches on the ownership of the shipping container that was placed on the land. As ownership of the container is not an issue for this Court, again this evidence has no relevance to the issues for determination. Given the hearsay and the lack of relevance, no weight is given to these statements of evidence.

Te Ture

The Law

[23] The Court has jurisdiction to grant an injunction per s 19 of the Act, the relevant parts of which are as follows:

19 Jurisdiction in respect of injunctions

- (1) The court, on application made by any person interested or by the Registrar of the court, or of its own motion, may at any time issue an order by way of injunction—
 - (a) against any person in respect of any actual or threatened trespass or other injury to any Maori land or Maori reservation; or
 - (b) prohibiting any person, where proceedings are pending before the court or the Chief Judge, from dealing with or doing any injury to any property that is the subject matter of the proceedings or that may be affected by any order that may be made in the proceedings; or
 - (ba) requiring any person to—
 - (i) remove any structure or object from any Maori land or Maori reservation; or
 - (ii) reinstate any structure or object that has been removed from any Maori land or Maori reservation; or

- (iii) restore any Maori land or Maori reservation to the condition it was in before it was modified by any infrastructure work, earthwork, or other means; or
- (iv) remedy any damage done to any Maori land or Maori reservation

[24] The established principles for granting a permanent injunction relating to an action of trespass have been addressed by the Māori Appellate Court in *Taueki v Horowhenua Sailing Club - Horowhenua II (Lake) Block* as follows:¹

In applying for a permanent injunction, applicants must also fulfil the legal elements relating to the action of trespass before the Court will exercise its jurisdiction to grant the remedy. These elements are set out below:

The action for trespass to land is primarily intended to protect possessory rights, rather than rights of ownership. Accordingly, the person prima facie entitled to sue is the person who had possession of the land at the time of the trespass. Actual possession consists of two elements: the intention to possess the land and the exercise of control over it to the exclusion of other persons. Either element alone is not sufficient...

Once the elements for the trespass action are made out, the Court then considers what remedy is appropriate. The prima facie rule is that a landowner is entitled to an injunction to restrain a trespass. However, the Court still has discretion as to whether to grant the injunction or not. Matters affecting the exercise of the discretion include the parties' conduct.

[25] The elements of trespass include:²

- (a) The act of a person entering or remaining;
- (b) Upon the land that is in the lawful possession of another;
- (c) Without lawful justification; and
- (d) Is actionable without proof of actual damage.

¹ *Taueki v Horowhenua Sailing Club - Horowhenua II (Lake) Block* [2014] Maori Appellate Court MB 60 (2014 APPEAL 60), at [15] – [16].

² *Te Hokowhitu v Proprietors of Matauri X* (2010) Maori Appellate Court MB 566 (2010 Appeal 566) at [31].

[26] The prima facie rule is that a landowner is entitled to an injunction to restrain a trespass.³ Trespass is the interference with another individual's exclusive possession of land without lawful justification. A trespass to land arises by unauthorised entry on the land of another, by remaining upon the land of another after the expiry of authority or licence to enter, or by putting any tangible object on the land of another or leaving the object there after authority or licence has expired.

[27] Once the elements of trespass have been made out, the Court must consider whether a permanent injunction is appropriate and maintains a discretion as to whether the injunction will be granted.⁴ Matters affecting the exercise of the discretion include the parties' conduct.⁵ The principles in relation to the grant of a permanent injunction are well settled. The applicant must show there is a serious issue to be tried; the balance of convenience favours the applicant; and it is in the overall interests of justice that the injunction should be granted.

Kōrerorero

Discussion

Is there a trespass?

[28] Ms Coates submitted that the respondents remain on the land without lawful justification and refers to the affidavit of Maria Dawson. Annexed to this affidavit is a photo taken by Mrs Dawson of the caravan, shipping container and vehicles on the land. Also annexed to her evidence are the two trespass notices, and the further notice to vacate the land sent by Kāhui Legal. With regard to lawful possession, Ms Coates submitted that the trustees have lawful possession by virtue of the legal ownership, and referred to the decision of *Eriwata v Trustees of Waitara SD* that confirms the trustees of an ahu whenua trust take legal ownership when they are appointed.⁶ She also submitted that the trustees exercise control over the land to the exclusion of others.

³ *Taueki v Horowhenua Sailing Club - Horowhenua II (Lake) Block*, above n 1, at [16].

⁴ *Taueki v Horowhenua Sailing Club - Horowhenua II (Lake) Block*, above n 1, at [16].

⁵ *Taueki v Horowhenua Sailing Club - Horowhenua II (Lake) Block*, above n 1, at [16].

⁶ *Eriwata v Trustees of Waitara SD s6 and 91 Land Trust - Waitara SD s6 and 91 Land Trust* 15 Aotea Appeal MB 192 (15 WGAP 192).

[29] Mr Crown denies that the respondents are committing trespass, as they do not accept the legal title of the land. Mr Crown submits that the land being occupied by himself and Mr Paraha is Onepu of Te-Ika-a-Māui, not Kawerau A4. With regard to the third respondent, Mrs Paraha, he says that she has not been staying on the land, rather she had been visiting. Ultimately because legal title is not accepted, the respondents do not accept that the trustees have authority over the land. The fact that the legal title for Kawerau A4 is not accepted is at odds with the application for an occupation order that is filed pertaining to Kawerau A4, where Mr Paraha seeks to establish a papakainga.

[30] When questioned as to whether he had received the trespass notices, Mr Crown denied receipt, however the notices were included in his bundle of documents and marked with the words “refused for cause without dishonour”, so certainly the notices were in his possession. When questioned as to whether he had received the letter from Kāhui Legal dated 18 February 2022, again he denied receipt, but this was referred to in email correspondence with Mr Crown and at the very least included in the bundle of documents attached to the application and served on Mr Crown.

[31] There is some uncertainty as to the personalities involved in this matter. The applicants initially considered that Mr Crown and Te Aho Paraha were one in the same person however Mr Crown asserts otherwise. Mr Crown’s emails are signed off with “the Sovereign in right of Te Ika A Maui acting on behalf of Te Aho Te Rangi of House Paraha”. In any event, Mr Crown acknowledged that himself and Mr Paraha are residing on land, and I accept the evidence of trustees that this land is Kawerau A4. With regard to whether Doreen Paraha has also been residing on the land, she was twice served with trespass notices on the land, and I do not consider that this was a coincidence.

[32] As to conduct, Mr Crown’s approach to litigation was to be evasive and argumentative. Due to the unreasonableness and inconsistency in the statements of Mr Crown, I give no weight to his assertions that the respondents, including Ms Paraha are not residing on the land.

[33] Ultimately, I find that the respondents have entered onto and remain on the land, which is owned and in the possession of the trustees, without lawful justification.

Is a permanent injunction appropriate?

[34] Ms Coates submitted that there is a serious question to be tried, as the trustees have a valid and enforceable right and the respondents are preventing their ability to exercise that right by residing on the land.

[35] As to the balance of convenience, Ms Coates submitted that the circumstances of the trespass are not minor. The respondents have started building a structure on the land, and are living on the land for free and without consent. This is despite numerous requests from the trustees for them to vacate. In addition, it is submitted that, in the event that an injunction is not granted, the respondents will continue to reside and build on the land, and damages would be an inadequate remedy.

[36] As to the overall interests of justice, Ms Coates says this favours the applicants as:

- (a) The respondents have no legal rights to reside on the land;
- (b) The respondents have refused to vacate the land despite several requests by the Trust to do so; and
- (c) By residing on the land, the respondents are hindering the ability of the Trust to administer and develop the land through the lake restoration project, which is for the benefit of all the owners of the land.

[37] While Mr Crown did not address these issues, there are some factors raised in the case for the respondent that I will address when considering the exercise of discretion. First is the respondents' belief that there is a right to be on the land by virtue of being descendants of Raimona Paraha and Hineira Apihai who may have been owners (to either the land or a parent block). Reference is made to Mr Paraha's kuia formally living on the site where the respondents are residing. To be clear, the right to determine use, including occupation of the land, sits with the trustees who have the authority to administer the land on behalf of the current beneficial owners.

[38] The next matter that I take into account are the applications that are, or will be filed with the Court. While Mr Paraha has applied for an occupation order regarding the land, as the land is administered by an ahu whenua trust the trustees' consent to an occupation order is required per s 328(2) of the Act. In the absence of trustee consent, the Court cannot make an order. Given the present circumstances I consider it unlikely that an order will be made. As to the s 45 application to be submitted to the Chief Judge, as this has not been filed it is inconsequential. Even if the application had been filed, I must determine the present application based on the present ownership and beneficial ownership. Ultimately neither of these applications are reasons to stay the proceedings.

[39] Taking all matters onto account, I find that there is a serious question to be tried, and the balance of convenience favours the applicants. In addition, the overall interests of justice favours the applicants.

Kupu whakataua

Decision

[40] Pursuant to s 19 of Te Ture Whenua Māori Act 1993 I grant ~~an interim~~ injunction.
a permanent

I whakapuaki i te 2:00pm i Waiariki, rua tekau mā rima o ngā rā o Poutū-te-rangi i te tau 2022.

Pronounced at 2:00pm in Waiariki on this 25th day of March 2022

T M Wara
JUDGE

Minute amended pursuant to Section 86 of Te
Ture Whenua Māori Act 1993 at:
272 Waiariki MB 226 dated 30 March 2022:

DEPUTY REGISTRAR

