IN THE MĀORI LAND COURT OF NEW ZEALAND
TAITOKERAU DISTRICT

A20160006578

UNDER	Sections 18(1)(h) and 19(1)(b), Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Allotments 170-176 Parish of Manurewa
BETWEEN	TUARI HETARAKA, PANIA NEWTON AND BETTY KING Applicants
AND	AUCKLAND COUNCIL First Respondent
AND	FLETCHER RESIDENTIAL LIMITED Second Respondent

Hearing:	26 June 2017 (Heard at Whangarei)
Appearances:	L Te Kani, counsel for Pania Newton N Hall, counsel for Fletcher Residential Ltd P Andrew, counsel for Auckland Council R Jones and T Dewes, counsel for Whai Rawa Property Holdings Limited Partnership T Hetaraka, in person
Judgment:	14 September 2017

JUDGMENT OF JUDGE M P ARMSTRONG

A20160005969

UNDER	Section 19, Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Lot 63 Deposited Plan 41449 and Lot 194 Deposited Plan 44298
AND BETWEEN	TUARI HETARAKA Applicant
AND	WHAI RAWA PROPERTY HOLDINGS LIMITED PARTNERSHIP Respondent

A20160005924

UNDER	Section 18(1)(h), Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Ngāti Tai Whenua
AND BETWEEN	TUARI HETARAKA AND DIANE DONEY Applicants

Introduction

[1] Applications have been filed by Tuari Hetaraka and others seeking:[1]

(a) A determination that various parcels of land are Māori customary land;

(b) To cancel or amend all orders concerning certain titles to land; and

(c) Injunctive relief prohibiting dealings with certain land.

[2] Some of the lands to which these applications relate are owned by Auckland Council, Fletcher Residential Limited ("Fletcher Residential") and Whai Rawa Property Holdings Limited Partnership ("Whai Rawa"). They seek to strike out these proceedings. The strike out applications are opposed. Mr Hetaraka, and a co-applicant Pania Newton, seek discovery.

[3] This judgment determines the strike out and discovery applications.

What are the substantive applications in this proceeding?

A20160006578 – Otuataua Stonefields

[4] This application seeks a determination that Allotments 170-176 Parish of Manurewa is Māori customary land, and an injunction prohibiting dealings with that land. Allotment 175-176 and Part Allotment 174 Parish of Manurewa,[2] is owned by Fletcher Residential. Lot 1-5 Deposited Plan 198546,[3] is owned by Auckland Council.

A20160005969 – Tamaki Girls College Site

[5] This application seeks to cancel or amend all orders concerning Lot 63 Deposited Plan 41449 and Lot 194 Deposited Plan 44298 and to injunct all trusts for fraud.[4] This land is the former site of Tamaki Girls College. It is owned by Whai Rawa.

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1 A20160006578, A20160005969 and A20160005924.
2 Computer Freehold Register NA758/49.
3 Computer Freehold Register NA125B/576.
4 Computer Freehold Register NA86D/517.

A20160005924 – Ngāti Tai Whenua

[6] This application seeks a determination that an unspecified area of land is Māori customary land. The application does not define the subject area. The maps filed in support of the application refer to the wider Auckland area, south of the Manukau harbour.

Statements of claim and further particulars

[7] Mr Hetaraka is an applicant for all three applications. Ms Newton is a co-applicant in the Otuataua Stonefields application.[5] Despite that, they appeared separately, filed separate pleadings, and ran separate arguments.[6] There are a number of other persons named as applicants in the applications who have not participated in this proceeding. Some have not even signed the applications.[7] I refer to these applications as the proceedings brought by Mr Hetaraka, and Ms Newton, respectively.

[8] Proceedings are commenced in this Court by filing an application pursuant to the Māori Land Court Rules 2011. Rule 4.2 and Form 1 in the Schedule to the Rules requires the applicant to state the grounds or reasons for the application, and any facts relied on, so as to fully inform the Court of the true nature of the application.

[9] Where an application involves a dispute akin to civil litigation in the mainstream courts, a more formal approach may be required by filing a particularised statement of claim. This is such a case. I directed Ms Newton to file a particularised statement of claim concerning her interest in the Otuataua Stonefields application. I directed Mr Hetaraka to file a particularised statement of claim for all three applications.[8] Those statements of claim were filed.

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5 A20160006578.

6 Ms Newston was represented by counsel, Mr Hetaraka was self-represented.

7 Only those who have signed are named in the intituling. Mr Hetaraka has also named the Ngāti Taimanawaiti Maori Incorporation as an applicant. There is doubt whether this is a legitimate or bogus entity, though it is not necessary to determine that in this judgment.

8 This direction required the pleadings to contain relevant particulars of time, place, amounts, names of persons, dates of documents or other records, and other circumstances in sufficient detail to fully and fairly inform the Court and the other parties of the nature and grounds of the application. 143 Taitokerau MB 130 (143 TTK 130).

[10] The respondents argued those pleadings did not contain sufficient particulars. I directed Mr Hetaraka and Ms Newton to file further and better particulars.[9] Both did so.

The Law

[11] Rule 6.28 of the Māori Land Court Rules, provides that I may dismiss an application if the applicant fails to properly advance the application, or fails to comply with an order or direction. I also have an inherent power to strike out proceedings.[10]

[12] Te Ture Whenua Māori Act 1993 and the Māori Land Court Rules do not address the factors to be taken into account when considering an application to strike out. The High Court Rules 2016 provide some guidance.[11] Rule 15.1 states:

> **15.1 Dismissing or staying all or part of proceeding**
>
> (1) The court may strike out all or part of a pleading if it−
>
> (a) discloses no reasonably arguable cause of action, defence, or case appropriate to the nature of the pleading; or
>
> (b) is likely to cause prejudice or delay; or
>
> (c) is frivolous or vexatious; or
>
> (d) is otherwise an abuse of the process of the court.
>
> (2) If the court strikes out a statement of claim or a counterclaim under subclause (1), it may by the same or a subsequent order dismiss the proceeding or the counterclaim.
>
> (3) Instead of striking out all or part of a pleading under subclause (1), the court may stay all or part of the proceeding on such conditions as are considered just.
>
> (4) This rule does not affect the court's inherent jurisdiction.

Should I strike out the pleading by Mr Hetaraka?

[13] The Court may strike out all or part of a pleading if it is likely to cause prejudice or delay. This requires an element of impropriety and abuse of the Court's processes.

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9 144 Taitokerau MB 296-297 (144 TTK 296-297).

10 Te Ture Whenua Māori Act 1993, s 6(2); *The Proprietors of Maraeroa C v NZ Forest Products Ltd* (2007) 121 Waikato MB 258 (121 W 258) at [12].

11 *Taueki v Horowhenua Sailing Club Ltd – Horowhenua 11 (Lake) Maori Reservation* (2015) 337 Aotea MB 68 (337 AOT 68); *Trustees of Owhaoko C Trust v Karena – Owhaoko C* (2017) 59 Takitimu MB 288 (59 TKT 288).

Examples include pleadings that are prolix, irrelevant, unintelligible, or that plead purely evidential matters.[12]

[14] The statement of claim filed by Mr Hetaraka contains a general assertion that Allotments 170-176 Parish of Manurewa is Māori customary land. The pleading in support refers to karakia, the Bible, He Whakaputanga (the Declaration of Independence in 1835), the Treaty of Waitangi, the British Intention Standing Orders in Council 1839, Te Ture Whenua Māori Act, the New Zealand Bill of Rights Act, the District Courts Act 1947, the Declaratory Judgments Act 1908, Mandamus Writ, and various court decisions. This pleading is prolix, unintelligible, contains irrelevant pleading, and pleads matters of evidence.

[15] A large amount of supporting documents are attached to the statement of claim. This includes various court decisions, copies of legislation, and a letter from a Cabinet Minister. These are not pleadings and do not advance the statement of claim.

[16] The further particulars filed by Mr Hetaraka continue in a similar vein. It refers once again to the Bible and various court decisions. The relief sought includes the "Tribunal" granting an urgent hearing of "Wai claims" and findings that the Crown has acted contrary to the principles of the Treaty of Waitangi. This relates to claims before the Waitangi Tribunal rather than a claim before this Court.

[17] I set out below an example of Mr Hetaraka's prolix, unintelligible and irrelevant pleading from the further particulars:

> 9. Many fraudulent unregistered Foreign Trusts and Companies continue to operate illegally upon our whanau hapu whenua.
>
> 10. None the less these lands are inadvertently in multiple contention or ongoing dispute which is one of many grounds to which fundamentally supports us.
>
> 11. These are very very big issues and raises very serious concerns about the transparency and integrity with accountability of The Crown, NZ Govt Depts, Waitangi Tribunals, "Trusts", "Councils" and their ignorant continuance with illegitimate legalities processes with continued encumbrances, mortgaging, developments, wahi tapu desecration, evictions

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[12] *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* [2013] 2 NZLR 679 at 710; *Taueki v Horowhenua Sailing Club Ltd – Horowhenua 11 (Lake) Maori Reservation* (2015) 337 Aotea MB 68 (337 AOT 68).

> or whanau displacement without replacement, water[s] pollution, water[s] exportation, trading exploitation, foreign trusts & interests, tax offences etc etc upon our whanau hapu whenua unextinguished of the native title until lawful abrogation is provided proof upon presentation.
>
> [sic]

[18] If the deficiencies in the pleading could be cured by further amendment, it may be appropriate to stay the proceeding, with an opportunity to amend, rather that striking it out.[13] I have directed Mr Hetaraka twice to file proper particulars. Even if I afforded Mr Hetaraka a further opportunity, I do not consider that proper particulars would be provided. Mr Hetaraka's unintelligible diatribe is not limited to the pleading. It permeates all documents he has filed and even his oral submissions. Mr Hetaraka has had sufficient opportunity to plead his case. He has failed to do so. I consider that his entire pleading should be struck out.

[19] Mr Hetaraka's pleading also fails to disclose sufficient particulars of time, place, dates, events, and other facts relied on to fully and fairly inform the Court and the respondents of the nature and grounds of his application. Mr Hetaraka has failed to properly advance the application, and failed to comply with my direction.[14] If I did not strike out the pleading, I would have dismissed the applications per r 6.28 of the Maori Land Court Rules.

Should I grant the discovery sought by Mr Hetaraka?

[20] Mr Hetaraka seeks discovery through two documents. The first is titled "Notice for Motion to Compel Propounded Discovery". The second is titled "Notice to Oppose Interlocutory Application". Both of these documents are prolix and unintelligible. The applications do not refer to the categories of documents sought.

[21] Generally, Mr Hetaraka would be entitled to discovery of documents that are relevant to any matter in question in the proceeding.[15] Whether documents are relevant, and discoverable, is assessed by the pleading. The current pleading is so prolix and unintelligible it would be impossible to determine what documents are relevant.

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13 *Van Der Kaap v Attorney-General* (1996) 10 PRNZ 162.
14 143 Taitokerau MB 130-132 (143 TTK 130-132).
15 Maori Land Court Rules 2011, r 6.20.

[22] If the pleading was deficient, but capable of repair, and discovery was required to enable repair, I would have been prepared to grant discovery, and allow Mr Hetaraka an opportunity to properly plead his case. Those circumstances do not apply. Discovery will not cure these defects. These deficiencies are due to Mr Hetaraka's inability, or refusal, to properly plead his case.

Should I strike out the pleading by Ms Newton?

[23] Unlike Mr Hetaraka, Ms Newton has filed a properly particularised statement of claim. There is no question of impropriety or abuse of process, however, an issue of jurisdiction does arise.

[24] The Court may strike out all or part of a pleading if it discloses no reasonably arguable cause of action. The following principles apply:[16]

(a) Pleaded facts, whether or not admitted, are assumed to be true;[17]

(b) The cause of action must be clearly untenable;

(c) The jurisdiction is to be exercised sparingly, and only in clear cases;

(d) The jurisdiction is not excluded by the need to decide difficult questions of law;

(e) The court should be particularly slow to strike out a claim in any developing area of law.

[25] The statement of claim filed by Ms Newton pleads as follows: Allotment 175 and 176 Parish of Manurewa was originally customary land of Ihumatao. The Crown confiscated this land by raupatu. This land was transferred by Crown grant into private ownership. The land is going to be developed by Fletcher Residential under the Housing Accords and Special Housing Areas Act 2013. There has been no consultation with

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16 *Attorney-General v Prince* [1998] 1 NZLR 262 (CA); *Couch v Attorney-General* [2008] NZSC 45; *Taueki v Horowhenua Sailing Club Ltd – Horowhenua 11 (Lake) Maori Reservation* (2015) 337 Aotea MB 68 (337 AOT 68).

17 This does not extend to pleaded allegations which are entirely speculative and without foundation.

Ihumatao. Claims concerning these issues are currently before the Waitangi Tribunal. Ms Newton has lobbied Heritage New Zealand to declare the land as an archaeological site.

[26] Ms Newton seeks an interim injunction preventing Auckland Council from approving development of the land, and prohibiting Fletcher Residential from undertaking the development, or alienating the land, pending the determination of the relevant claims by the Waitangi Tribunal, and the decision by Heritage New Zealand on whether the land is an archaeological site.

[27] I have the power to grant an interim injunction per s 19(1)(b) of the Act 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. The Court is defined in section 4 of the Act as the Māori Land Court or the Māori Appellate Court.

[28] I do not have the power to grant an interim injunction, where proceedings are pending before the Waitangi Tribunal, or Heritage New Zealand. I have no jurisdiction to grant the relief Ms Newton seeks. This is a complete bar to her claim. There is no reasonably arguable cause of action, and her pleading should be struck out.

Should I grant the discovery sought by Ms Newton?

[29] Ms Newton seeks discovery of documents concerning consultation with Ihumatao in relation to the Housing Accords and Special Housing Areas Act 2013. This relates to Ms Newton's claim before the Waitangi Tribunal.

[30] I can order a party to provide discovery of documents that are relevant to any matter in question in the proceeding before this Court.[18] The discovery sought by Ms Newton relates to the proceeding before the Waitangi Tribunal. I do not have jurisdiction to order such discovery. Ms Newton can seek discovery in that jurisdiction.

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[18] Māori Land Court Rules 2011, r 6.20.

Decision

[31] I dismiss the applications by Mr Hetaraka and Ms Newton seeking discovery.

[32] I grant an order striking out the entire pleadings by Mr Hetaraka and Ms Newton. Applications A20160006578, A20160005969 and A20160005924, are dismissed.

[33] The respondents seek costs. I direct the respondents to file and serve submissions on costs within one month. Ms Newton and Mr Hetaraka are to file and serve submissions in response within two months. I will then decide costs on the papers.

Pronounced in open Court in Whangarei at 2:15 pm on Thursday this 14th day of September 2017.

M P Armstrong
JUDGE