



**Hei kōrero tīmatanga***Introduction*

[1] The Tukuahau Whānau Trust (“the Trust”) was established in 1994 for the beneficial interests of Tukuahau Hohepa.

[2] Ngawhainga Kiriona (“the applicant”) filed applications on 4 and 30 March 2021 for enforcement of trustee obligations under s 238 of Te Ture Whenua Māori Act 1993 and partial termination of trust under s 241 in relation to the Trust. The grounds of the applications are, essentially, that the applicant believes the trustees are acting unfairly as between beneficiaries, and the instructions of her kuia to give herself and her children land to build on was not followed.

[3] The trustees, including the applicant’s mother Blanche Kiriona, oppose the applications, saying the applicant’s claims lack any evidentiary foundation and are untrue and defamatory.

**He kōrero whānui***Background*

[4] The Trust was established on 3 March 1994.<sup>1</sup> It is for the beneficial interests of Tukuahau Hohepa, the applicant’s kuia. The trust order comprises only 3 sections, providing for the title, objects and powers of the Trust. The key powers of the trustees are:

- (a) Promoting the health, social, cultural and economic welfare, education and vocational training and general advancement in life for the descendants of Tukuahau Hohepa.
- (b) Māori Community purposes as provided for in s 218 of Te Ture Whenua Māori Act 1993.

[5] The current trustees are Blanche Kiriona, Kapua Hohepa Watene, Kipa Hohepa, Mihiterina Hohepa, Phillip Perepe Hohepa, Raymond Patihana Tolley and Te Ara Groot.<sup>2</sup>

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<sup>1</sup> 235 Rotorua MB 74 (235 ROT 74).

<sup>2</sup> 221 Waiariki MB 263-270 (221 WAR 263-270).

Kipa Hohepa and Mihiterina Hohepa are deceased. The Trust holds a number of interests primarily in Waiariki, but also in the Waikato-Maniapoto district.

[6] There have been previous partial terminations of the Trust as land has been given to beneficiaries.

[7] On 4 August 2009, before Judge Harvey, there was a partition application brought by Nyreen Kiriona (a child of Blanche Kiriona) for Whakapoungakau No. 9B Section 13 to partition 5000m<sup>2</sup> to build.<sup>3</sup> There was no opposition and a vesting order was made with the partition application adjourned to allow for written submissions.

[8] On 9 October 2019, an application by Blanche Kiriona to partially terminate the Trust was granted for Whakapoungakau 2D2D1A and Whakapoungakau 2D2B2B2, vesting a 0.00001 share in each of the respective beneficiaries of the Trust who had attained the age of 20.<sup>4</sup> This was for the purpose of speaking and voting rights. An application was also granted to replace Maata Tolley who had passed away with Raymond Patihana Tolley as trustee.

[9] On 6 March 2020, an application by Jason Wiri-Rapata Hohepa to partially terminate the Trust was granted in relation to 2/9ths of the beneficial entitlement of Whakapoungakau No. 11B No 4B from Te Hiko o te Rangi Hohepa and Blanche Kiriona to Jason, and an occupation order in favour of Jason.<sup>5</sup> The term of the order was for the life of Jason Wiri-Rapata Hohepa, passing by succession to Te Waiora Stephen Hohepa.

[10] Ngawhainga Kiriona filed the application to enforce the obligations of the Trust on 4 March 2021. The matter was heard on 6 May 2021 but was adjourned awaiting registration of the partial termination of trust application so the matters could be heard together.<sup>6</sup> Both applications were adjourned by consent on 28 May 2021 to allow parties to provide further responses.<sup>7</sup>

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<sup>3</sup> 344 Rotorua MB 63-67 (344 ROT 63-67).

<sup>4</sup> 221 Waiariki MB 263-270 (221 WAR 263-270).

<sup>5</sup> 231 Waiariki MB 181-190 (231 WAR 181-190).

<sup>6</sup> 253 Waiariki MB 255-261 (253 WAR 255-261).

<sup>7</sup> 256 Waiariki MB 228 (256 WAR 228).

[11] A hearing was held on 7 July 2021 and I reserved my decision.<sup>8</sup> I directed the trustees to advise the Court as to their views on the partial termination of trust. A response from the trustees was received on 4 August 2021.

**Ngā tuku kōrero**  
*Submissions*

*Applicant's submissions*

[12] The grounds for the application to enforce obligations of the Trust include that the trust deed has not been updated in 27 years, trust deed objects and powers are not being exercised, there is a failure to replace deceased trustees, and trustees are acting inequitably towards some beneficiaries. The applicant raised concerns as to inconsistencies with gifted land, differences in the Trust land schedule between 2008 and 2021 and a general lack of communication from the trustees. The applicant requested more information be provided, particularly as to whether land has been transferred to anyone other than her sister and nephew.

[13] As to the application for partial termination of trust made on 30 March 2021, the applicant is seeking a piece of land in her own name to build on for herself and her children. She submitted that in establishing the Trust, her kuia intended her to have two specific blocks (Tikopapa No 2 and Matewera) and refers to her own record of a hui on 15 November 1993 which indicates shares would be gifted to her prior to the formation of the whānau trust in 1994. However, this was never done.

[14] The applicant also submitted that she was unlawfully replaced as a trustee by Te Ara Hohepa and Blanche Kiriona and requested to be reinstated as a trustee of the Trust.

*Trustees' submissions*

[15] In written submissions, the trustees set out the process they follow when beneficiaries request land:

- (a) Any land provided will be by way of occupation order only.

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<sup>8</sup> 258 Waiariki MB 110-121 (258 WAR 110-121).

- (b) Whānau members must: meet with their whānau and their representative brings the request to the Trust; be financially able to connect to infrastructure and comply with all consents; respect the land and those on and around it; and have building and other relevant plans approved by local authorities.
- (c) Land is currently being offered for building or moving compliant transportable homes. Temporary homes will not be considered.
- (d) Requests will be heard and worked through in a timely manner.

[16] The trustees submitted that the applicant has not provided evidence of her ability to afford connecting to essential infrastructure or to comply with consents, and her honesty and poor preparation are also an issue. They say this is a different situation than when Jason Wiri-Rapata Hohepa requested land as he was able to afford connection to infrastructure and meet consent requirements.

[17] The trustees recognised replacement trustees were required for the two trustees who had passed away and advised the Court on 27 July 2021 that they had met to discuss the matter. They advised that trustee representation is based upon nine whānau lines. They submitted a replacement trustee was not required for Mihiterina Hohepa as she had no issue, and the replacement trustee for Kipa Hohepa is still being decided by his children.

*Applicant's submissions in response*

[18] On 24 September 2021, the applicant responded to the trustees' submissions and said her house plan was realistic and based on her means of income and savings. She submitted that she is in the process of organising infrastructure, plumbing, water, and electricity. She emphasised that the trustees must treat all beneficiaries fairly and act in their best interests.

[19] The applicant also submitted that it is unfair that there are non-immediate smaller shareholder relations living on the land with no formal occupation order or proper infrastructure on land her kuia specifically wanted to go to her and her children. She says she relinquished her trustee position on the understanding this land would be returned pursuant to the final wish of her kuia.

[20] The applicant requested that the trustees stop making dividend payments, cease paying tangi koha to non-immediate whānau and for unveilings, and put all land payments towards infrastructure for the development of homes for beneficiaries. She submitted this is in line with the Māori Community purpose in the trust order. She also asked that all past meeting minutes be validated against official documents and whānau present should be asked to recall meetings.

[21] The applicant also said she does not agree to the appointment of Debbie Hohepa and Aaron Te Ua as trustees as they do not reside in New Zealand, their families are not active in trust matters, and they lack knowledge to be trustees.

**Te Ture**  
*The Law*

[22] Section 241 of Te Ture Whenua Māori Act 1993 (“the Act”) states:

**241 Termination of trust**

- (1) The Court may at any time, in respect of any trust to which this Part applies, terminate the trust in respect of—
- (a) the whole or any part of the land; or
  - (b) the whole or any part of any interest in land subject to the trust, —

by making an order vesting that land or that part of that interest in land in the persons entitled to it in their respective shares, whether at law or in equity, or in such other persons as the beneficial owners may direct.

- (1A) However, for land vested in trustees by an order made under section 132(6) (for which a class of persons are the beneficial owners or beneficiaries), the order must vest that Maori freehold land in the trustees of another trust under section 132(6), and section 132 applies for that purpose, excluding section 132(8) and with any other necessary modifications.
- (2) Where a trust terminated under subsection (1) of this section is a whanau trust, the court shall, notwithstanding anything in subsection (1), make an order vesting the land or the part of the land or the interest in the land in the persons entitled to it in their respective shares, whether at law or in equity, which persons are—
- (a) the persons who were, at the creation of the trust and are at the date of the order, the beneficial owners of the land or the part of the land or the interest in the land; and

- (b) any persons who, at the date of the order, are successors of any of the persons who were, at the creation of the trust, the beneficial owners of the land or the part of the land or the interest in the land.

[23] In *Larkins v Wi Kaitaia – Waihou Hutoia D2A*, Māori Appellate Court considered the application of s 241 of the Act and set out the following principles:<sup>9</sup>

- (a) A change of mind is usually insufficient as a ground for termination unless there is an absence of opposition;
- (b) Termination should be refused where it is likely to result in detriment or create unreasonable disadvantage to affected parties;
- (c) Evidence of a trust failing to adhere to their terms of trust and core accountabilities may be sufficient grounds for termination.

[24] Section 238 of the Act deals with enforcement of obligations of trust:

**238 Enforcement of obligations of trust**

- (1) The court may at any time require any trustee of a trust to file in the court a written report, and to appear before the court for questioning on the report, or on any matter relating to the administration of the trust or the performance of his or her duties as a trustee.
- (2) The court may at any time, in respect of any trustee of a trust to which this section applies, enforce the obligations of his or her trust (whether by way of injunction or otherwise).

[25] In *Clarke v Karaitiana*, the Court of Appeal confirmed that the Māori Land Court has wide supervisory and enforcement powers under s 238:<sup>10</sup>

... Apart from the inherent jurisdiction enjoyed by the High Court and conferred on the Māori Land Court by s 237, the Māori Land Court has wide supervisory and enforcement powers under s 238. These include the power to require any trustee to provide a written report to the Court and to appear before the Court in any matter relating to the administration of the trust or the performance of his or her duties as a trustee. In addition, the Court may, at any time, in respect of any trustee, enforce the obligations of the trust whether by injunction or otherwise. As well, the Court has the power, at any time, to add, reduce, replace or remove trustees under ss 239 and 240.

<sup>9</sup> *Larkins v Kaitaia – Waihou Hutoia D2A Block* [2013] Māori Appellate Court MB 159 (2013 APPEAL 159), at [27].

<sup>10</sup> *Clarke v Karaitiana* [2011] NZCA 154, at [36].

**Kōrerorero***Discussion*

[26] The key issues for determination are whether the applications for enforcement of trustee obligations and partial termination of trust in relation to the Trust should be granted.

*Enforcement of trustee obligations*

[27] In essence the applicant asks the Court to make the trustees partially terminate the trust so she can be given a piece of land in her own name to build on for herself and her children. The issue is that her and the trustees, and in particular her mother, do not get along and the trustees are not doing what she wants them to do.

[28] The trustees have provided a process that they go through, and have been through, when considering owners requests for matters such as the applicant's. In fact, they have supported and approved previous requests of a similar nature.

[29] In this situation they do not support what the applicant seeks, in part due to costs for infrastructure but also due to the request not meeting criteria the trustees have set. The applicant opposes the trustees making dividend payments, providing koha for tangi and unveilings, and in her view all land payments should be put towards infrastructure for the development for homes.

[30] As long as the trustees are abiding by their trust deed they are able to decide to make decisions as to how and where trust funds are directed and as to how the land is administered. The trustees have a decision making process that they have been through in coming to their decision to decline the applicant's request. This is not in my view, a situation where the Court should be forcing the trustees into doing something because of the wishes of one beneficiary when the trustees' current actions are not in breach of the trust deed or their trustee obligations.

[31] The application for enforcement of trustee obligations is dismissed.

*Partial termination*

[32] The applicant's main reason for seeking partial termination of trust is because, as she submits, in establishing the Trust, her kuia intended her to have two specific blocks (Tikopapa No 2 and Matewera). However, the gifting of the lands was not done prior to the formation of the Trust in 1994. Those lands are therefore part of the Trust.

[33] The Court relies on the Court orders which clearly show that the lands mentioned by the applicant as being lands of the Trust. If orders in establishing the Trust were incorrect and included lands that should not have been included then the applicant will need to file a s 45 application and seek to have the 1994 orders changed. I do not have jurisdiction to change those orders and will not change the situation through partial termination, especially in light of the trustees' opposition.

[34] Further, the trustees have previously supported partial terminations in specific situations. In this situation, the trustees clearly oppose partial termination. Given the opposition and that partial termination will clearly result in detriment or create unreasonable disadvantage to the other beneficiaries in that lands will be removed from the whānau trust, the Court dismisses the application.

*Other matters*

[35] The applicant also submitted that she was unlawfully replaced as a trustee by Te Ara Hohepa and Blanche Kiriona and requested to be reinstated as a trustee of the Trust. There is a lack of evidence before the Court to substantiate this issue.

[36] The applicant also raises her opposition to the appointment of Debbie Hohepa and Aaron Te Ua as trustees. Any appointment or reinstatements of a person would need to be confirmed by the Māori Land Court to ensure the nominees were suitable and the applicant would have a chance to raise any concerns when such an application is filed with the Court.

**Whakataunga**

*Decision*

[37] Both applications are dismissed.

I whakapuaki i te 12.00 pm i Rotorua-nui-a-Kahu Matamomoe, rua tekau o ngā rā o Apereira  
i te tau 2022.

C T Coxhead  
**JUDGE**