

**IN THE MĀORI APPELLATE COURT OF NEW ZEALAND
WAIKATO-MANIAPOTO DISTRICT**

A20170001430

UNDER Section 79 Te Ture Whenua Māori Act 1993
IN THE MATTER OF WANI WANI 1 BLOCK
BETWEEN WIREMU HIRA RICK MURU AS TRUSTEE OF
WANI WANI 1 TRUST
Appellant
AND MAUNGATAUTARI ECOLOGICAL ISLAND
TRUST
Respondent

Hearing: On the papers
Court: Judge M P Armstrong (presiding)
Judge L R Harvey
Judge M J Doogan
Counsel: P Jeffries for Appellant
S Garmonsway for Respondent
Judgment: 6 October 2017

JUDGMENT OF THE COURT ON COSTS

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Introduction

[1] Our reasons for dismissing this appeal were issued on 21 August 2017.¹ Counsel were then invited to submit memoranda as to costs.

[2] This judgment determines what costs, if any, are appropriate.

Submissions

[3] Ms Garmonsway submits that the actual costs amount to \$12,900.13. She contends that we should award 80 per cent of that amount, plus disbursements, being a total of \$10,824.88.

[4] Mr Jefferies disputes neither the actual costs incurred or that costs should be awarded. He argues that an award of 40 per cent of actual costs plus disbursements is appropriate, a total of \$5,664.78.

The Law

[5] The jurisdiction of the Court as to costs is discussed in our earlier decision *Nicholls v Nicholls – Part Papaaroha 6B Block*.² In summary:

- (a) The Court has an absolute and unlimited discretion as to costs;
- (b) Costs normally follow the event;
- (c) A successful party should be awarded a reasonable contribution to the costs actually and reasonably incurred;
- (d) The Court has a role in facilitating amicable, ongoing relationships between parties involved together in land ownership, and these concerns may sometimes make awards of costs inappropriate. That said, where an orthodox approach to the litigation has been adopted by a party, the same principles as to costs will apply; and
- (e) There is no basis for departure from the ordinary rules where the proceedings were difficult and hard fought, and where the successful party prevailed in the face of serious and concerted opposition.

¹ *Muru v Maungatautari Ecological Island Trust – Wani Wani 1 Block* [2017] Māori Appellate Court MB 248 (2017 APPEAL 248).

² *Nicholls v Nicholls – Part Papaaroha 6B Block* [2014] Māori Appellate Court MB 2 (2014 APPEAL 2).

[6] We see no reason to depart from that approach and adopt the above principles.

Discussion

Should costs be awarded?

[7] There is no dispute that costs should be awarded, the issue in this case is quantum.

What level of costs is appropriate?

[8] In our assessment, this proceeding was conducted in a manner akin to civil litigation in the mainstream courts. The respondent was wholly successful and is therefore entitled to a reasonable contribution to the costs actually and reasonably incurred.

[9] The appellant's prospects of success in this appeal were always bleak. We do not go so far as to say that the appeal was completely without merit, but the lack of realism in bringing the appeal is a relevant factor which should be reflected in the award of costs.

[10] While the appeal was filed out of time, leave was granted for the appeal to proceed. In addition, we acknowledge that the appellant acted reasonably in the conduct of the appeal. We also consider that the parties have an ongoing relationship under the lease, and any award should be tempered so as not to undermine that relationship.

[11] Taking these factors into account, we consider that an award of 60 per cent of actual costs, plus disbursements, is appropriate.

Decision

[12] The appellant must pay the respondent costs of \$8,244.85 inclusive.

Pronounced at 4.15pm in Wellington on Friday this 6th day of October 2017

M P Armstrong (Presiding)
JUDGE

L R Harvey
JUDGE

M J Doogan
JUDGE