

**IN THE MAORI APPELLATE COURT OF NEW ZEALAND
WAIKATO MANIAPOTO DISTRICT**

**A20170005075
APPEAL 2017/14**

UNDER	Section 58 of Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Parish of Manurewa 196 and 197A Section 2B 4
BETWEEN	JUSTIN JAMES PACE Appellant
	JODI CAIN Respondent

Hearing: On the papers

Court: Judge L R Harvey (Presiding)
Judge C T Coxhead
Judge S F Reeves

Judgment: 12 October 2017

JUDGMENT OF THE COURT

Copies to:

Justin Pace
Jodi Cain

Introduction

[1] On 5 December 2016 Judge Milroy granted confirmation of a resolution of assembled owners for the sale of Parish of Manurewa Lots 196 and 197A Section 2B 4 to Jodi Cain.¹

[2] Justin Pace appeals that decision and he does so out of time.

[3] There are two issues for determination:

- (a) Does the appellant have standing to bring the appeal?
- (b) Should the Court grant leave to allow the filing of the appeal out of time?

Background

[4] Parish of Manurewa Lots 196 and 197A Section 2B 4 is Māori freehold land comprising 0.1619 hectares. An ahu whenua trust was constituted over the block on 19 March 1975.² The sole responsible trustee is Raymond Kett.

[5] In 2016 three applications were filed concerning the land:³

- (a) to determine the life interest held by Jean Francis Meta;
- (b) to confirm a resolution of assembled owners to sell the block to Jodi Cain; and
- (c) to terminate the ahu whenua trust.

[6] They were heard together by Judge Milroy on 5 December 2016.⁴ As foreshadowed, she granted the confirmation of the resolution of assembled owners to sell to Jodi Cain. Judge Milroy also granted orders determining the life interest of Jean Meta and terminating the trust.

Appellant's submissions

[7] The appellant submits that he has a material interest in the land and was not consulted by Raymond Kett about its sale to Jodi Cain.

¹ 134 Waikato Maniapoto MB 132-150 (134 WMN 132-150) The order was made conditional upon the purchase price being paid to the vendor's solicitor by the date set out in the Sale and Purchase Agreement and advice to the Court of the payment being received.

² 53 Waikato MB 125 (53 W 125).

³ See A20160005958, A20160005959 and A20160005960.

⁴ 134 Waikato Maniapoto MB 132-150 (134 WMN 132-150).

[8] The appellant further states that he is currently awaiting the outcome of his s 45 application, to the Chief Judge, regarding the estate of his grandmother, Margaret Rose Karaka who he says was the sole beneficiary of her husband's estate, which included this land.

The Law

[9] The decision of this Court in *McCarthy v Collerton – Awarua 3D34B* is relevant to the issue of standing in terms of the appeal provisions set out in the Māori Affairs Act 1953:⁵

The draftsmen obviously contemplated, and wished to provide for, an appeal by a person who was not a party and was not bound by the orders in a sense narrower than that mentioned above. He obviously considered there could be someone else who was affected by the order and affected more than the world at large would be affected thereby. That it was contemplated that there would be degrees in which a person could be affected is shown by the adjective “materially” but there does not appear to be in the same Statute any measuring rod for the Court to use to determine at what point in the degrees of being affected the barrier between exclusion and inclusion should be placed.

...

The Court is of the opinion that each case must be judged on its merits and that one claiming to be so materially affected by an order as to entitle an appeal by that one must satisfy an Appellate Court in each case where the question is raised that the extent is such as to be accepted by that Court as material.

[10] In *Fisher and Paykel Ltd v Commerce Commission* the Court of Appeal confirmed that excessive delay will often be an important factor in determining whether leave should be granted:⁶

As a general principle affecting the exercise of the discretion, in matters concerning continuing commercial practices and ongoing business arrangements, it is important both in the interest of the parties and in the general public interest that any application for leave be made reasonably promptly. A delay as long as six months is a factor telling against the discretion, although not in itself decisive.

[11] In addition, it is well settled that the onus is on the appellant to fully set out the grounds of explaining the delay.⁷

[12] We adopt the principles set out above.

⁵ (1961) 12 Whanganui Appellate Court MB 75 (12 WGAP 75). See also *Northcroft v Northcroft – Tauhara Middle 4AILIBIA* (1995) 9 Waiariki Appellate Court MB 49 (9 AP 49).

⁶ *Fisher and Paykel Ltd v Commerce Commission* (1991) 1 NZLR 569 (CA) at 572.

⁷ *Tahere v Tau - Rangihamama X3A and Omapere Taraire E (Aggregated)* [2017] Māori Appellate Court MB 62 (2017 APPEAL 62) citing *Matchitt v Matchitt - Te Kaha 65* [2015] Māori Appellate Court MB 433 (2015 APPEAL 433).

Discussion

Does the appellant have standing to bring the appeal?

[13] The appellant argues that he is materially affected by the order granted by Judge Milroy. We disagree. Section 58(2) of the Act provides that an appeal may be brought by or on behalf of any party to the proceedings in which the order is made, or any other person bound by the order or materially affected by it.

[14] The appellant argues that his grandmother, Margaret Karaka, is entitled to an interest in the land and says that he has filed proceedings per s 45 seeking an amendment to orders made regarding her estate.⁸ According to Court staff, Margaret Karaka was not an owner in this land. However, a Pare Mita is an owner and appears to be a sister of John Mita, the husband of Margaret Karaka. That said, this does not change the fact that the appellant is not an owner.

[15] Given that there has been no decision on the s 45 application, there can be no certainty as to whether the appellant will be successful or whether that decision will result in the appellant obtaining an interest in the land.

[16] The appellant has not provided sufficient evidence that he is a person materially affected and consequently we conclude that he does not have standing to prosecute an appeal.

Should the Court grant leave to appeal out of time?

[17] As we have concluded that the appellant has no standing, we need not consider the issue of an appeal filed out of time. Even so, and for completeness, we set out our reasons for declining leave.

[18] Factors relevant to whether to grant leave to appeal out of time include:⁹

- (a) The prospective merits of the appeal;
- (b) The parties' conduct;

⁸ 4 Registrar's MB 68 (4 RGWM 68) and 5 Registrar's MB 219 (5 ADWM 219).

⁹ See *Tahere v Tau - Rangihamama X3A and Omapere Taraire E (Aggregated)* [2017] Māori Appellate Court MB 62 (2017 APPEAL 62) and *Greenaway - Paenoa Te Akau* [2017] Māori Appellate Court MB 44 (2017 APPEAL 44).

- (c) The extent of prejudice caused by the delay;
- (d) The length of the delay and the reasons for it; and
- (e) Whether the appeal raises any issue of public importance.

[19] The overarching consideration is where the overall interests of justice lie.¹⁰

[20] The notice of appeal and application for leave to appeal out of time were received by the Court on 16 August 2017, six months out of time. As this Court has previously found it is incumbent upon the appellant to bring such proceedings as soon as possible after becoming aware of the terms of the order appealed from.¹¹

[21] The decision to confirm the resolution was made on 5 December 2016 and the s 45 application was filed in March 2017. Yet the application to appeal was not filed until August 2017. The appellant has not provided any reason for the delay in filing the appeal other than to argue that he was not consulted about the sale and has a s 45 application in train. We do not see any reason why the appellant could not have reasonably filed the appeal sooner.

[22] In addition, we are not satisfied that the merits of the appeal are sufficient to warrant granting leave to appeal out of time. The appellant's principal complaint is that he was not consulted about the sale. However, as he is not an owner, it is understandable why the responsible trustee did not consult the appellant. There was no requirement for the trustee to do so. In any event, the resolution to sell the land was confirmed because there was over 75 percent support for the resolution.

[23] We also have regard to the extent of the prejudice caused by the delay. We infer that the appellant's argument is that he will be prejudiced by the sale of the land as he will not be able to obtain an interest. Conversely, the former beneficial owners and the new owner – Jodi Cain will be prejudiced by not being able to settle the sale. In the circumstances, we consider that the prejudice to the owners and Ms Cain outweighs the potential prejudice to the appellant.

[24] Our conclusion is that it is in the interests of justice that the application for leave to appeal out of time is dismissed.

¹⁰ Ibid.

¹¹ *Ross – Part Rangatira E* (1998) 1 Waiariki Appellate MB 111 (1 AP 111).

Decision

[25] The application for leave to appeal out of time is dismissed.

[26] There will be no order as to costs.

Pronounced at 4.30pm in Wellington on Thursday this 12th day of October 2017

L R Harvey
JUDGE
(Presiding)

C T Coxhead
JUDGE

S F Reeves
JUDGE