

I TE KOOTI PĪRA MĀORI O AOTEAROA
I TE ROHE O TE WAIARIKI
In the Māori Appellate Court of New Zealand
Waiariki District

A20180005980
APPEAL 2018/13
A20180006063
APPEAL 2018/15

WĀHANGA Section 58, Te Ture Whenua Māori Act 1993
Under

MŌ TE TAKE Matangareka 3B Block
In the matter of

I WAENGA IA TUIHANA POOK
Between Kaipīra tuatahi
First Appellant

ME RICHARD (JOHN) BUTLER, THOMAS
And BUTLER AND STEWART BUTLER
Second Appellants
Kaipīra tuarua

ME EDWARD MATCHITT
And Te Kaiurupare
Respondent

Nohoanga: 9 September 2019, 2019 Māori Appellate Court MB 494-530
Hearing (Heard at Rotorua)

Kooti: Deputy Chief Judge C L Fox (Presiding)
Court Judge L R Harvey
Judge S R Clark

Kanohi kitea: C Bidois for Second Appellants
Appearances J Pou for Respondent

Whakataunga: 20 March 2020
Judgment date

TE WHAKATAUNGA Ā TE KOOTI
Judgment No 2 of the Court

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Introduction

[1] Edward Matchitt brought proceedings against the former trustees of the Matangareka 3B Ahu Whenua Trust, including the second appellants, claiming inter alia, that they had failed to manage conflicts of interest with the result that they had profited from their office.

[2] Hearings took place before Judge Savage on 18 November 2016,¹ Judge Reeves on 24 November 2016,² and finally before Judge Reeves on 8 February 2017.³

[3] Judge Reeves issued three decisions. This appeal concerns her final judgment dated 12 June 2018.⁴ In that decision the Judge considered allegations of breach of trust in relation to inter alia payments made to spouses or partners of trustees and advance funds to Eastern Contracting Limited (ECL), whose sole director and shareholder was the chairperson of the trust. After making various findings against the trustees, Judge Reeves also considered whether to grant indemnity or relief from liability. Eventually she made the following orders:⁵

- (a) The trustees who had paid \$40,000.00 to Robyn Power, the partner of John Butler for administrative services, must repay that sum;⁶ and
- (b) The trustees who had paid \$50,000.00 to ECL for road clearance work, must repay that sum.

[4] On appeal the second appellants submitted that Judge Reeves failed to take into account relevant considerations when making orders that the trustees repay \$40,000.00 and \$50,000.00 respectively. Those considerations include the trustees right to indemnity, the benefits received by the trust and the extent of any unjust enrichment.

[5] The first hearing of the appeal was held at 6 November 2018.⁷ In a decision dated 12 April 2019, we upheld an appeal by the first appellant Tuihana Pook. In relation to the

¹ 153 Waiāriki MB 59-72 (153 WAR 59-72).

² 153 Waiāriki MB 127-202 (153 WAR 127-202).

³ 159 Waiāriki MB 17-93 (159 WAR 17-93).

⁴ *Matchitt v Butler – Matangareka 3B* (2018) 189 Waiāriki MB 74 (189 WAR 74).

⁵ *Ibid*, at [153].

⁶ Richard John Butler is commonly known as ‘John Butler’. We refer to him as John Butler in this decision.

⁷ 2018 Māori Appellate Court MB 558-603 (2018 APPEAL 558-603).

second appellants we found that they had failed to properly manage conflicts of interest concerning the payment of \$40,000.00 to Robyn Power and the advance of \$50,000.00 to ECL.⁸

[6] On the question of whether the trustees were entitled to indemnity or any relief from liability we considered ss 38 and 73 of the Trustees Act 1956. We were satisfied that relief from liability for the second appellants was not appropriate. They had failed to understand that all three of them, by participating in trust meetings and passing resolutions to pay significant amounts of trust funds that would benefit one or more of them and in the case of John Butler to his partner, was inexplicable.⁹ We found that their conduct was not reasonable, and they could not claim relief from liability.¹⁰

[7] However, on the issue of the amount paid to Robyn Power, we considered that taking into account the nature and size of the trust, its asset base and income, the frequency of meetings and state of trust records, the lack of a formal process of advertising and appointment, that an allowance of \$3,000.00 per annum as an honorarium for the work she carried out would be appropriate in the circumstances.¹¹

[8] At paragraph [86] of our decision we provided a caveat:¹²

This is on the proviso that there are records that can confirm the duties that were undertaken by Ms Power. These might include invoices, receipts, timesheets and related supporting documents. Without that confirmation, then we cannot see how these payments can be justified. Rather than referring this matter back to the Court below, counsel should submit these documents to the Registrar for assessment within two months from the date of this judgment. If we are satisfied with their voracity, then the allowance we have indicated as appropriate will be confirmed and deducted from the total amount due for repayment by the effected trustees.

[9] In relation to the \$50,000.00 advanced to ECL we said:¹³

...For this amount to be properly claimed, then there needs to be appropriate evidence to support the assertion the trust itself needed to be responsible for this cost and that the amount paid was reasonable in the circumstances. In the absence of such evidence, then we cannot take the claim for deduction for unjust enrichment further.

⁸ *Pook and Others v Matchitt – Matangareka 3B* [2019] Māori Appellate Court MB 167 (2019 APPEAL 167) at [60]-[62].

⁹ *Ibid*, at [82].

¹⁰ *Ibid*, at [83].

¹¹ *Ibid*, at [85].

¹² *Ibid*, at [86].

¹³ *Ibid*, at [87].

Counsel has two months to file further evidence that supports the assertion that the amount paid was the responsibility of the trust and that the cost was fair and reasonable. To avoid doubt, if no such evidence is provided to our satisfaction then the orders of Judge Reeves for repayment on this issue will be affirmed.

[10] We granted leave to file additional evidence on or before 12 June 2019. The second appellants subsequently filed affidavits by Robyn Power and John Butler, dated 12 June 2019. There was also an attempt to file supplementary affidavits by both John Butler and Ms Power, dated 28 August 2019, well outside the two-month period that we had granted. No leave was sought to file late and nor did the content of the proposed affidavits advance the relevant issues. For those reasons, at the outset of the hearing on 9 September 2019, we confirmed that the proposed further evidence would not be admitted.¹⁴

[11] The issues for consideration by us are:

- (a) What allowance or deduction, if any, should be made for the administrative services undertaken by Robyn Power for the trust?
- (b) What allowance or deduction, if any, should be made for the road clearance work undertaken by ECL?

Robyn Power

[12] From sometime in late 2013 through to 29 June 2016, Robyn Power provided administrative services to the trust. She was not an employee of the trust during that period. John Butler stated that it was always the intention of the trust to employ Ms Power. However, another trustee, Moana Waititi stated in cross examination that she worked for the trust as a volunteer only.¹⁵ A formal employment contract for Ms Power was not signed until on or about the 1 of July 2016.¹⁶

[13] On 29 June 2016, the following resolution was passed by the trustees:¹⁷

**Resolution: That the remuneration to Robyn for services to Matangareka over 3years be set at an amount of \$40,000.00 net after tax.
Moved: Moana Waititi
2nd: Tom Butler carried**

¹⁴ 2019 Māori Appellate Court MB 494-530 (2019 APPEAL 494-530) at 497-498.

¹⁵ 159 Waiāriki MB 79-93 (159 WAR 79-93) at 80.

¹⁶ Employment Agreement dated 1 July 2016, Record on Appeal at 722-732.

¹⁷ Trustee meeting minutes dated 29 June 2016, Record on Appeal at 555-556.

[14] In her decision Judge Reeves was concerned that Robyn Power had a close relationship with three of the six trustees. John Butler was her partner and chairperson of the trust. Although he declared his conflict, he remained in the meeting at the time the discussion and vote took place when he should have left the room. Also, his brothers Thomas Butler and Stewart Butler, did not recuse themselves when they should have. Therefore, the resolution was not passed by a majority of trustees.

[15] Judge Reeves was also concerned that there was no principled or objective basis on which the sum of \$40,000.00 was arrived at. There was no information to indicate how the payment was calculated and no advice had been taken. Judge Reeves recorded that the employment agreement was entered into after the \$40,000.00 had been paid to Robyn Power. This had the appearance of a retrospective fix to regularise Ms Power's engagement. Again, no attempt was made to manage conflicts within the trustee group when the employment agreement was signed.

[16] On this issue we were likewise unimpressed with the actions of the trustees. We found that the conflicts were not properly managed consistent with best practice and were compounded particularly in the case of John Butler whereby his partner was preferred.¹⁸

[17] In her affidavit dated 12 June 2019 Robyn Power states:

- (a) In 2013 she was working as an administrator for Orete 2 and Other Blocks Incorporated. She was asked in late December 2013 to carry out some administrative tasks for the Matangareka 3B Trust;
- (b) For the year 2014, she outlined her attendance as a minute taker at various meetings on behalf of the trust. She stated that her meeting attendances totalled 49.25 hours in travel and attendance time. In addition, there were other administrative tasks that she carried out such as opening bank accounts;
- (c) For the year 2015, she referred to attendances in relation to negotiations with the Inland Revenue Department and other dealings with third parties; and

¹⁸ *Pook and Others v Matchitt – Matangareka 3B* [2019] Māori Appellate Court MB 167 (2019 APPEAL 167) at [60]-[82].

- (d) For the year 2016, she referred to her attendance at various meetings including meetings of trustees and the AGM. She stated that the total time spent at meetings was 20.25 hours, with the same amount of time spent preparing for and attending to work after the meetings.

[18] Ms Power was adamant that at all times she was treated as an employee, not as a volunteer. She stated that she was of the understanding that she would be paid once the trust had generated some income. She also referred to various out of pocket expenses she paid on behalf of the trust. For example, travel costs, stationery, power and computer costs. Ms Power made the statement that the \$40,000.00 paid to her equated to approximately \$256 or ten hours per week over a three-year period.

[19] Mr Bidois submitted that his clients had relied upon cl 3(b)(viii) of the trust order, which authorises the trustees to meet trust administration costs out of trust revenues, and that it was always contemplated that the secretarial administration costs of the trust would be met by the beneficial owners. He argued that the evidence filed including copies of trustee meetings “place it beyond doubt that the beneficiaries of the Trust have received the benefit of a full secretarial service”. He also submitted that Ms Power paid for the cost of utilities and consumables out of her own pocket, which were truly trust expenses.

Discussion

[20] We accept that Ms Power carried out some administrative services for the trust. We have before us various trust minutes which range from 2014 through to the end of June 2016. They confirm her attendance at meetings as a minute taker. Moana Waititi gave evidence that although Ms Power was not employed in 2014, she gave up her time to bring the trust up to speed in relation to the administrative work, which had not been completed between 2005 through to 2013.¹⁹ Even so, having considered the evidence and submissions of the Second Appellants, we identify four points that persuade us to dismiss the appeal.

[21] First, notwithstanding the affidavit filed by Robyn Power, there is a paucity of evidence enabling us to objectively assess the nature of the work carried out. No timesheets or any records were provided which show the hours Ms Power spent working for the trust.

¹⁹ 159 Waiāriki MB 157-158 (159 WAR 157-158).

She refers to various out of pocket expenses incurred on behalf of the trust, however no receipts or invoices were provided to the Court. Also, there are no reordered trustee resolutions approving payment of those out of pocket expenses.

[22] Second, in her evidence before us, Ms Power stated that she did keep a record of attendances in a book but had now lost it.²⁰ We were also concerned that Ms Power referred to attending eight trustee meetings between 13 July 2016 and, until an AGM was held on, 29 October 2016. Of course, the problem is that those meetings were held after the \$40,000.00 had been paid to her and after she signed an employment contract.²¹

[23] Third, there was never any attempt by the trustees to objectively size the requirements of the job. There was no independent analysis of whether the \$40,000.00 paid was reasonable for the type of tasks being undertaken.

[24] Accordingly, we have concerns about the size of the payment made to Ms Power. It was expressed in the resolution of 29 June 2016 as “\$40,000.00 net after tax”. We assume that the reference to “net after tax” means that the trustees accepted that they had a liability to pay PAYE on behalf of Robyn Power. The financial records for the trust show an entry dated 8 July 2016 to Robyn Power. It refers to “Administration wages since February 2014” of \$40,000.00 being paid to Robyn Power.²² If our analysis about payment being “net after tax” is correct, then in effect the gross amount which the trustees agreed to pay Ms Power was in excess of \$50,000.00. The entry refers to wages being paid from February 2014 through to the end of June 2016. This is a 28month period or a monthly equivalent of \$1,428.57 net after tax. We consider that such a payment was excessive for an administrator of a trust of this nature, size, asset base, income and frequency of meetings.

[25] The breach was particularly egregious given that it directly benefited the chairperson of the trust, John Butler in that it was made to his partner. Exacerbating the situation was the fact that at the same meeting held on 29 June 2016, the trustees made resolutions to pay themselves trustee fees absent a clause in the trust order that permitted them to do so, and in the case of John Butler to pay him \$20,000.00 as the chairperson’s honorarium.

²⁰ 2019 Māori Appellate Court MB 494-530 (2019 APPEAL 494-530) at 527-528.

²¹ Affidavit of Robyn Power dated 12 June 2019, Supplementary Record on Appeal at 86.

²² Bank Reconciliation Report dated 1 April 2016 to 30 September 2016, Record on Appeal at 678.

[26] Fourth, in our decision of 12 April 2019, we considered that an allowance of \$3,000.00 per annum as an honorarium would be appropriate in the circumstances. That was on the proviso that Ms Power could provide the necessary documentation relating to the duties she had undertaken including invoices, receipts, timesheets and related supporting documents. Absent that documentation we stated that we could not see how those payments could be justified.

[27] Ms Power has not provided that documentation. It is clear to us that timesheets and records of her attendances were simply not kept. What she has provided in her affidavit is a retrospective attempt, and not a particularly convincing one, to outline her attendances. If as she states it was always intended that she was an employee and would be paid, one would expect some record of her attendances to have been kept. If she paid expenses out of her own pocket which were trust expenses, you would expect that receipts and invoices would be kept. Ms Power has not provided any receipts and invoices evidencing payment of expenses.

[28] The trustees made the \$40,000.00 payment to Ms Power. The onus was on them to produce the evidence we had sought in order to enable us to carry out a proper assessment of any allowance to be made.²³ The trustees and Ms Power have largely failed to provide that evidence. We accept that at times an exercise such as this is not capable of a precise mathematical analysis and that a reasonable proximation is required. Therefore, for the 28month period the trustees agreed to pay Ms Power wages, we allow a total of \$6,000.00. This is to reflect her time travelling to and attending meetings and general administrative tasks. The allowance does not include any sum for out of pocket expenses for which no evidence has been provided.

ECL

[29] As foreshadowed, on 26 August 2016, the trustees resolved to pay \$50,000.00 to ECL as a part advance payment for road clearing. ECL was a company in which John Butler was the sole director and shareholder. The trust advanced those monies in two instalments, \$20,000.00 on 29 August 2016 and \$30,000.00 on 30 August 2016.²⁴

²³ *Crampton-Smith v Crampton-Smith* [2012] 1 NZLR 5 at 20; *Chirnside v Fay* [2007] 1 NZLR 433 at 472.

²⁴ Bank Reconciliation Report dated 1 April 2016 to 30 September 2016, Record on Appeal at 678.

[30] During the trustee meeting on 26 August 2016 there was no attempt on the part of John Butler to identify the conflict of interest or recuse himself from being part of the discussions and the resolution to pay \$50,000.00 to ECL.

[31] In her final decision Judge Reeves recorded her concerns that:²⁵

- (a) There was no attempt to obtain a quote for any work from ECL. The trustees simply approved payment without question;
- (b) The trustees showed no appreciation of the conflict of interest between John Butler as the chair of the trust and as the sole director and shareholder of ECL; and
- (c) The trustees had not demonstrated any principled basis for paying \$50,000.00 for the roadworks.

[32] In our first decision we agreed with the analysis of Judge Reeves in that serious conflicts of interest existed in relation to John Butler, Thomas Butler and Steward Butler (“the Butlers”) and these were not properly managed. The Judge considered that the Butlers should not have been involved in decision making surrounding affected transactions as they had a direct personal income in the outcomes and they should have been excluded from all discussion concerning the affected agreements.²⁶

[33] On the question of whether the order for repayment of the \$50,000.00 could be sustained, we gave the second appellants an opportunity to file:²⁷

...appropriate evidence to support the assertion that the trust itself needed to be responsible for this cost and that the amount paid was reasonable in the circumstances. In the absence of such evidence, then we cannot take the claim for deduction of unjust enrichment further.

[34] John Butler filed an affidavit dated 12 June 2019. In it he stated that as the trust was the owner of the standing forest they had the responsibility to construct the roading and

²⁵ *Matchitt v Butler – Matangareka 3B* (2018) 189 Waiāriki MB 74 (189 WAR 74) at 91.

²⁶ *Pook and others v Matchitt – Mantangareka 3B* [2019] Māori Appellate Court MB 167 (2019 APPEAL 167).at [61].

²⁷ *Ibid*, at [87].

processing sites necessary for the transport trucks to get to the forest to collect logs. He stated that had a lease a been in place, it would have been the responsibility of the lessees to arrange for the roading work.

[35] Mr Butler attached to his affidavit an invoice from ECL to the trust. The invoice records work being carried out in relation to road and track construction between 12 September 2016 through to and including 11 November 2016. The sum invoiced to the trust is \$50,131.48 including GST.

[36] The affidavit has attached to it a brief of evidence of Gregory Bell, a director of Professional Harvesting Systems (NZ) Limited (“PHS”). PHS’s role was to manage and oversee all contract activities within Matangareka 3B to successfully bring logs to the market. Those tasks included the harvest planning of roads and skids, managing the road construction programme and the budgeting of roading costs. Mr Bell’s evidence was that with regard to ECL’s roading rates, the hourly rate submitted to them were comparable if not slightly cheaper than current market rate. Having said that the actual roading rates were not disclosed in his brief of evidence.²⁸

[37] In addition, a series of photographs were attached to Mr Butler’s affidavit. They were filed to show that the roads had been constructed and were in use prior to an injunction being put in place preventing access to the forest.

Discussion

[38] At the first hearing of this appeal there was reliance placed by the appellants on the fact that forestry contracts had been publicly advertised in relation to harvesting and road work and that there were no applicants for the advertised work, apart from the companies owned respectively by Thomas and John Butler. The submission, therefore, was that there was no real risk that the trustees wrongly preferred themselves ahead of other applicants.

[39] At the hearing before us on 9 September 2019, John Butler gave evidence where there appeared to be some confusion over the timing of trustee resolutions in relation to

²⁸ Brief of Evidence dated 24 November 2016, Record on Appeal at 623.

roading contracts. We called for copies of trust minutes to clarify the position. They were filed by Mr Bidois on 16 September 2019.

[40] The following chronology of events, drawn from trustees' records, is relevant:

- (a) On 29 June 2016, the trustees discussed harvest plans and maps. They decided to appoint PHS as a forest consultant for Matangareka 3B. At the same time they appointed two trustees, Stewart Butler and Moana Waititi, as forest operations managers with their role being to oversee harvest management and road engineering;²⁹
- (b) On 19 August 2016, the trustees discussed inter alia the clearing of tracks in the forest. The minutes of that meeting record that “John can see if his digger will do the job of the tracks”;³⁰
- (c) On 26 August 2016, the trustees resolved to pay \$50,000.00 to ECL as a part advance payment for the road clearing in Matangareka 3B;³¹
- (d) ECL commenced road clearing and construction on or about 12 September 2016. This work was carried out until 11 November 2016;³²
- (e) In late September and early October 2016, the trustees arranged for a series of newspaper advertisements calling for expressions of interest for road engineering, harvesting and distribution. Registration of expressions of interest closed at 4.00pm 14 October 2016;³³
- (f) On 13 October 2016, John Butler on behalf of ECL registered an expression of interest for the road engineering work;³⁴

²⁹ Trust meeting minutes dated 29 June 2016, Record on Appeal at 552.

³⁰ Trust meeting minutes dated 19 August 2016, Record on Appeal.

³¹ Trust meeting minutes dated 19 August 2016, Record on Appeal.

³² Affidavit of John Butler dated 12 June 2019, Supplementary Record on Appeal at 125-130.

³³ Opotiki News Advertisement dated 29 September 2016, Record on Appeal at 573.

³⁴ Registration of Interest dated 13 October 2016, Record on Appeal at 576.

- (g) On 16 October 2016, the trustees signed a Harvesting and Marketing agreement with PHS. PHS undertook to provide inter alia harvest planning operation and supervision. The agreement also imposed an obligation on PHS to monitor whether roading costs were fair and reasonable and that roads were fit for purpose;³⁵
- (h) On 4 November 2016 a resolution was passed by the trustees to award ECL a contract for road engineering in Matangareka 3B. The minutes record that John Butler did not vote on the resolution;³⁶
- (i) A forest roading contract with ECL was then entered into on 1 of November 2016.³⁷

[41] We have set out that chronology of events in some detail as they demonstrate a number of points. The first is that the decision by the trustees to make an advance payment of \$50,000.00 to ECL on 26 August 2016 should not be confused with the subsequent calling for expressions of interest to register for road engineering work and the decision by the trustees on 4 November 2016 to award ECL that contract. They were two separate decisions.

[42] The decision made on 26 August 2016 to pay ECL \$50,000.00 was an advance payment to carry out initial road and track clearance whilst the latter decision made on 4 November 2016 was to carry out subsequent roading engineering work.

[43] The trustee resolution on 26 August 2016, reveals that none of the trustees, particularly John Butler identified any conflict of interest. Clearly there was a conflict of interest because John Butler was both the chair of the trust and the sole director of ECL. However, this was not identified (though it is likely that the Butlers knew of this), and no attempt at recusal was made. In that respect the breach was particularly egregious.

[44] We also note that no quote had been provided by ECL for the work undertaken and no attempt had been made to quantify whether the \$50,000.00 advance payment was

³⁵ Harvesting and Marketing Agreement dated 16 October 2016, Record on Appeal at 616.

³⁶ Trustee meeting minutes dated 4 November 2016, Record on Appeal at 578.

³⁷ Contract for forest roading services dated 1 November 2016, Record on Appeal at 600.

reasonable or not. Further, no attempt had been made to identify any other potential contactors at that stage.

[45] The trustees must have been aware that the decision to pay ECL \$50,000.00 on 26 August 2016 involved a conflict of interest on the part of John Butler. They had been advised prior to their appointment as trustees, that they needed to take care in declaring their personal business interests with those of the trust. John Butler was queried on that very point before Judge Reeves and accepted potential issues of conflicts needed to be managed carefully.³⁸

[46] The simple point is that in relation to the prepayment of \$50,000.00 to ECL, there was no attempt to manage the conflict at all.

[47] We have considered the evidence given by Mr Butler in his brief of evidence before the Court below,³⁹ his affidavit of 12 June 2019 and his answers to cross examination before us. In our decision of 12 April 2019, we confirmed that we required appropriate evidence to support the assertion that the trust itself needed to be responsible for the road clearance work and that the amount paid was reasonable in the circumstances. We provided a clear indication to the second appellants that absent such evidence we cannot take the claim for an allowance or deduction for unjust enrichment further.

[48] There are references in the trustees' minutes for the need to commence harvesting and to clear roads and tracks and for a harvesting plan to be put in place. Other than that, nothing has been put before us by the second appellants which sets out the details of the road clearance and construction that was required. There is no evidence before the Court from Moana Waititi on this point, whose role included overseeing road engineering. We also note there is no evidence from PHS, whose role included monitoring roading costs and fitness for purpose. The only direct evidence is from the conflicted trustee, John Butler.

[49] We also draw attention to the fact there is no evidence which supports the proposition that the work carried out by ECL in August through to November of 2016 was necessary at that time. If there was a harvest plan put before the Court which demonstrated the trustees'

³⁸ 153 Waiāriki MB 127-202 (153 WAR 127-202) at 190-191.

³⁹ Brief of Evidence of Richard John Butler dated 24 November 2016, Record on appeal at 493-502.

intentions to harvest an area in which the roads were cleared, that would have sufficed, but there was not.

[50] The onus to provide evidence allowing us to form a basis upon which we could decide on whether any allowance or deduction was appropriate, is simply not before us. The second appellants have had numerous opportunities to put that evidence before the Court below and before us, but they have failed to do so. We had also signalled the possibility of an allowance or deduction to prevent the trust from being unjustly enriched. While we suspect that some of the road clearance and construction work undertaken by ECL may have been necessary, the onus was on the trustees to provide evidence that persuaded us that was the case. They have failed to do so and there is simply insufficient evidence to persuade us to that position. That, coupled with their complete failure to identify and manage the conflict of interests, ensures the inescapable outcome in this appeal is that we affirm the decision of Judge Reeves for repayment of the \$50,000.00 to the trust.

Orders

[51] Pursuant to s 56(1)(a) of the Act, we vary the order made by Judge Reeves at paragraph [153] (b) of her final decision dated 12 June 2018.⁴⁰ We order that Richard John Butler, Thomas Henry Butler, Stewart James Butler, Maura Hiona Robson and Moana Parehuia Waititi must pay to the Matangareka Ahu Whenua Trust the sum of \$34,000.00 (thirty-four thousand dollars).

[52] Pursuant to s 56(1)(a) of the Act, we affirm the order made by Judge Reeves at paragraph [153] (c) of her final decision dated 12 June 2018. Richard John Butler, Thomas Henry Butler, Stewart James Butler, Maura Hiona Robson and Moana Parehuia Waititi must pay to the Matangareka Ahu Whenua Trust the sum of \$50,000.00 (fifty thousand dollars).

Costs

[53] We understand that all parties are in receipt of special aid. Therefore, we do not encourage the respondent seeking costs. Should he have a different position he is directed

⁴⁰ *Matchitt v Butler – Matangareka 3B* (2018) 189 Waiāriki MB 74 (189 WAR 74) at 106-107.

to file any submissions within 14 working days of the date of this decision. The second appellants, thereafter have a further 14 working days to file any submissions in reply.

Pronounced at 2.00 pm at Hamilton on Friday the 20th day of March 2020

C L Fox
DEPUTY CHIEF JUDGE
(Presiding)

L R Harvey
JUDGE

S R Clark
JUDGE