

**IN THE MĀORI LAND COURT OF NEW ZEALAND  
WAIARIKI DISTRICT**

**A20140009366**

UNDER	Section 338(7), Te Ture Whenua Māori Act 1993
IN THE MATTER OF	Okoroire 457N1 Māori Reservation
AND	PHILOMENA ROBERTS Applicant

Hearing: 21 October 2014, 106 Waiariki MB 213  
5 December 2014, 111 Waiariki MB 69-87  
3 July 2015, 123 Waiariki MB 281-287  
8 April 2016, 139 Waiariki MB 78-94  
(Heard at Rotorua)

Judgment: 31 May 2016

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**RESERVED JUDGMENT OF JUDGE C T COXHEAD**

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## Introduction

[1] This is an application to replace trustees of Okoroire 457N1 Māori reservation, commonly referred to as Paparamu marae. The application was lodged in 2014 but has since been through various iterations. This decision arises from the 8 April 2016 hearing to confirm as trustees three individuals elected at a hui on 21 March 2016.<sup>1</sup> The applicant, Ms Roberts, objects to the appointment of two of these individuals.

## Background

[2] Paparamu marae currently has seven trustees, four of whom, including the applicant, were appointed at a Court hearing on 2 October 2013.<sup>2</sup> That hearing addressed an earlier application by Ms Roberts to replace seven trustees.

[3] Following this, on 13 July 2014, Ms Roberts made the present application to the Court to remove five trustees for the following reasons: Jonathon Barrett, deceased; Naumai Warren, resigned; Jacki Thompson, resigned; Maureen Armstrong, ill health and non attendance in two years; and James Ngati, dishonesty and non-attendance of hui. In addition Ms Roberts applied for Susan Brunton and Kaaran Etana Clair to be added as trustees. By the time of the 5 December 2014 hearing, before Judge Savage,<sup>3</sup> Ms Roberts not only sought the named trustees' removal, but also opposed the addition of the individuals originally nominated in the application.

[4] At that hearing, Ms Roberts complained about the dumping of demolished building rubble on marae grounds, a shortage of funds, and the apparent disappearance of a Trust Waikato grant (possibly used to cover marae bills) earmarked for the improvement of the marae buildings. Furthermore, Ms Roberts also complained that the marae was uninsured.

[5] After hearing from the parties Judge Savage considered that:<sup>4</sup>

Now I am convinced that the applicant is correct, that the trustees have not performed. They accept that themselves. When you do not perform the Court has

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<sup>1</sup> 139 Waiariki MB 78-94 (139 WAR 78-94).

<sup>2</sup> 67 Waikato Maniapoto MB 274-296 (67 WMN 274-296).

<sup>3</sup> 111 Waiariki MB 69-87 (111 WAR 69).

<sup>4</sup> Ibid at 85.

the right, indeed the duty to remove you. To put it in a nut shell you have shown me the misperformance, the failure to perform of these trustees against that...

I am teetering on the brink of removing you as trustees. I am influenced by the fact that senior members of the hapū still support you. You have got to redeem yourself now.

[6] Judge Savage adjourned the application for a year and directed that, in the intervening period, trustee meetings should be held and recorded bi-monthly. He instructed the parties that if the situation had not improved upon their return to the Court in a year's time, then he would be likely to remove trustees.

[7] On 29 March 2015, a hapū hui gave a vote of "no confidence" in the trustees. In light of this vote, Ms Roberts brought the application back to the Court earlier, in order to determine the position of the trustees. The 3 July 2015 hearing was held before me. I directed that the Court facilitate an AGM (overdue by roughly three years), at which a re-election of trustees should also be held.<sup>5</sup> In a subsequent memorandum I clarified that, while current trustees might consider standing down and seeking re-election, this was not mandatory. As it happens, no trustees opted to stand down.

[8] The meeting occurred on 21 March 2016. Only the trustee election took place. The AGM matters were postponed so as to allow the attendees to return, as soon as possible, to a tangihanga which was occurring on the same day. Three valid nominations for the position of trustee were received. A motion to accept all three nominees by show of hands was adopted. Those in favour of accepting the nominees outnumbered those against by 15 to seven.

[9] Prior to the 8 April 2016 hearing to confirm and appoint the elected trustees,<sup>6</sup> the Court received the applicant's objections to the appointment of Ms Gail Hamilton and Mr Grant Mahirahi Thompson.

[10] Ms Roberts also requested that two nominations deemed invalid, one for lateness and the other for being filed incorrectly, be reconsidered. At the hearing I declined to do so. The call for nominations and the election process had been over-cautiously notified

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<sup>5</sup> 123 Waiariki MB 281-287 (123 WAR 281-287).

<sup>6</sup> 139 Waiariki MB 78-94 (139 WAR 78-94).

and managed.<sup>7</sup> It was clear that, despite the two individuals' excellent skills and qualifications, the nominations were late or incorrectly completed and therefore invalid.

### **The applicant's submissions**

[11] Ms Roberts objects to the appointment of Ms Hamilton and Mr Thompson. Citing s 222 of the Te Ture Whenua Māori Act 1993 (the Act), she argues that the Court, when appointing trustees, should consider the ability, experience, and knowledge of the individual concerned, and should not appoint an individual unless satisfied that they are broadly acceptable to the beneficiaries. Ms Roberts argues that these criteria cannot be fulfilled in relation to Ms Hamilton and Mr Thompson.

[12] In relation to Mr Thompson, Ms Roberts submits:

- (a) Mr Thompson was previously a trustee when the marae was beset by severe mismanagement and "an obvious lack of transparency and financial accountability". This period saw the marae buildings fall into dangerous disrepair and the undocumented spending of \$3000 of Trust Waikato funding.
- (b) Mr Thompson was removed as a trustee by the Māori Land Court on 2 October 2013 for non-attendance at meetings, which casts doubt over his ability to carry out the duties of a trustee.
- (c) At a special hui on 6 March 2016, Ms Hamilton moved a motion, which was carried, for the previous trustees to be prosecuted for the mismanagement of marae finances. Mr Thompson was one of these trustees.

[13] In relation to Ms Hamilton, Ms Roberts submits that she lacks the attributes of a suitable trustee and would be a liability to the marae. Specifically:

- (a) Ms Hamilton has persistently sought to undermine the applicant and the other trustees by creating discontent amongst beneficiaries. This has obstructed the trustees from fulfilling their functions and duties. For example, Ms Hamilton

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<sup>7</sup> Ibid at 82.

organised a hui with hapū elders to make allegations against the trustees. She also instigated an impromptu vote of no confidence in the trustees.

- (b) Ms Hamilton's behaviour towards the applicant, including interrupting and shouting over her at hui and spreading rumours about her.

[14] Ms Roberts also submits that the election process undertaken on 21 March 2016 was flawed, such that the Court cannot be satisfied that those elected are broadly acceptable to the beneficiaries. She argues:

- (a) The hui occurred at the same time as a tangi so many beneficiaries were unable to attend to vote.
- (b) She could not, prior to the vote, present the good work she and her fellow trustees had undertaken to repair the damage wrought by the previous trustees, because the AGM was postponed. Had attendees received this information, they may not have supported Mr Thompson and Ms Hamilton.
- (c) The vote was supposed to be by ballot box. The method used (show of hands) was flawed. It was unclear whether all those who raised their hands were eligible voters. Furthermore, beneficiaries voted on one motion to accept all three nominees, rather than voting in relation to each individual.

[15] Ms Roberts stated that if Ms Hamilton and Mr Thompson were appointed as trustees, she would have "no option" but to resign as she does not believe either are prepared to work constructively with the current trustees in the best interests of the marae.

### **The response to the objections**

[16] On 8 April 2016 the Court received a letter from Ms Hamilton responding to Ms Robert's affidavit. She noted:

- (a) Mr Thompson was not removed in 2013. He lost his seat because he sought re-election and did not receive enough votes.

- (b) Ms Roberts has repeatedly raised the matter of the missing Trust Waikato funds. In an attempt to bring this matter to an end, Ms Hamilton moved, at a hui, that those responsible be prosecuted/held liable. The motion was not seconded and therefore became null and void.

[17] At the hearing, Mr Thompson responded to the allegation that the previous trustees had misappropriated funds, saying that this was exaggerated and incorrect.<sup>8</sup> The Court also heard from Ms Hamilton, who was reluctant to address what she felt were petty, personal grievances against her. She affirmed that, were she appointed, she would work with the other trustees, for the purpose of the marae and their tupuna.

### **Additional expressions of objection and support**

[18] The Court received a letter from Marlene Roberts supporting Ms Robert's position. She questioned the election process and the suitability of Mr Thompson and Ms Hamilton.

[19] In response to the objections, the Court received a letter from Zoe Poutama highlighting that Ms Robert's criticism of Mr Thompson for his position as a trustee during a time of mismanagement would also apply to Jim Ngati, who Ms Roberts is currently working with as a co-trustee. Ms Poutama also suggested that the Trust Waikato funds matter now be left to rest. She called for the whānau to start working together as a collective.

### **The Law**

[20] The Paparamu Marae is a Māori reservation. The Court's power to appoint trustees to Māori reservations is provided by ss 338(7) and 239 of the Act, which state:

#### **338 Maori reservations for communal purposes**

... (7) The court may, by order, vest any Maori reservation in any body corporate or in any 2 or more persons in trust to hold and administer it for the benefit of the persons or class of persons for whose benefit the reservation is made, and may from time to time, as and when it thinks fit, appoint a new trustee or new trustees or additional trustees.

#### **239 Addition, reduction, and replacement of trustees**

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<sup>8</sup> 139 Waiariki MB 78-94 (139 WAR 78-94).

(1) The court may at any time, on application, in respect of any trust to which this Part applies, add to or reduce the number of trustees or replace 1 or more of the trustees.

(2) The court may amend the court's records for a trust if a trustee dies and the court receives a death certificate for the deceased trustee.

(3) In exercising the powers in subsections (1) and (2), the court may order the vesting of land or other assets of the trust in any person or persons (with the consent of that person or those persons) upon the terms of the trust, whether or not that person was previously a trustee.

[21] These provisions grant the Court a discretionary power to appoint trustees of a Māori reservation.<sup>9</sup> However, s 338 is silent on relevant factors to weigh when exercising this discretion. The applicant has referred to the s 222 criteria, but, as noted in *Paora – Te Tii Waitangi A*,<sup>10</sup> this section applies to trusts constituted under Part 12 of the Act, whereas Māori reservations are constituted under Part 17.<sup>11</sup>

[22] Nevertheless, in various decisions the Court has applied the s 222 criteria in the Māori reservation context.<sup>12</sup> Furthermore, as noted in *Paora*, one should apply the Act's Preamble, s 2 and s 17, which point to the same approach as s 222, anyway. Namely, that aspiring trustees must have the relevant ability, experience and knowledge to perform as trustees, and must be broadly acceptable to beneficiaries.<sup>13</sup>

[23] Arguably, the lack of express considerations allows for a broader inquiry. When considering nominated appointees for a Māori reservation the Court has indicated that it considers a broad range of factors, including who the reservation has been set aside for, the characteristics of proposed trustees, and other relevant matters.<sup>14</sup> Prior to the *Paora* case, the Court had already held that the retention and utilisation principles in the Preamble and ss 2 and 17 suggest “an inclusive approach” to the appointment of trustees, which “takes

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<sup>9</sup> *Perenara v Pryor – Matata 930* (2004) 10 Waiariki Appellate MB 233 (10 AP 233) at 240; *Watson – Mahanga 1C1E* (2009) 129 Wairoa MB 240 (129 WR 240) at [10].

<sup>10</sup> *Paora – Te Tii Waitangi A (Waitangi Marae)* (2015) 94 Taitokerau MB 134 (94 TTK 134).

<sup>11</sup> At [54].

<sup>12</sup> *Perenara v Pryor – Matata 930* (2004) 10 Waiariki Appellate MB 233 (10 AP 233) at 242; *Fenton – Rūrima Māori Reservation* (2004) 102 Whakatane MB 196 (102 WHK 196); *Tangitu – Parish of Te Puna Lot 154A2 (Epiha Urupā)* (2005) 82 Tauranga MB 274 (84 T 274); and *Powell – Tunapahore 6* (2015) 130 Waiariki MB 160 (130 WAR 160).

<sup>13</sup> *Paora – Te Tii Waitangi A (Waitangi Marae)* (2015) 94 Taitokerau MB 134 (94 TTK 134) at [55].

<sup>14</sup> *Bristowe – Section 4C1 Block II Tuatini Township and Lot 1 DP 7439 and Lot 2 DP 7439* (2002) 151 Gisborne MB 250 (151 GIS 250) at 257; *Ward-Williams – Ngāti Tanewai 6A Section 5* (2003) 123 Aotea MB 159 (123 AOT 159) at 163; *Fenton – Rūrima Māori Reservation* (2004) 102 Whakatane MB 196 (102 WHK 196) at 199.

into account the views of both the beneficial owners and the persons for whom the reservation was set aside”.<sup>15</sup>

### **Should those nominated be appointed?**

*Is there broad support for the nominees?*

[24] Here, the nominees were determined via an election. In objecting to their appointment, Ms Roberts has raised concerns about the election process.

[25] The Court appoints trustees to Māori reservations after considering various matters. It is not bound by election results. Elections are not of themselves determinative of who will be appointed. Rather, they offer evidence of who those at the meeting supported for nomination, indicating where owner and beneficiary support lies.<sup>16</sup>

[26] Procedural irregularities and informal hui for determining nominees will not necessarily be fatal to an application to appoint those nominees, but the Court will weigh this when considering the nominees’ support.<sup>17</sup> Assessing support from an election of trustees is often not foolproof, especially if there is no accurate record of who voted and for whom, and the Court may have to be pragmatic.<sup>18</sup> In *Perenara v Pryor*, the Appellate Court determined that the majority of beneficiaries supported elected nominees over the current trustees, even if irregularities in the evidence caused an “over-statement of the numbers disaffected with the Current Trustees”.<sup>19</sup>

[27] This selection process for trustees in this situation has been overly cautious. The nomination and election process was supervised by the Court. Court staff assisted in the

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<sup>15</sup> *Bristowe – Section 4C1 Block II Tuatini Township and Lot 1 DP 7439 and Lot 2 DP 7439* (2002) 151 Gisborne MB 250 (151 GIS 250) at 258-259; *Ward-Williams – Ngāti Tanewai 6A Section 5* (2003) 123 Aotea MB 159 (123 AOT 159) at 163; *Fenton – Rūrīma Māori Reservation* (2004) 102 Whakatane MB 196 (102 WHK 196) at 199.

<sup>16</sup> *Bristowe – Section 4C1 Block II Tuatini Township and Lot 1 DP 7439 and Lot 2 DP 7439* (2002) 151 Gisborne MB 250 (151 GIS 250) at 257; *Ward-Williams – Ngāti Tanewai 6A Section 5* (2003) 123 Aotea MB 159 (123 AOT 159) at 163 and 167; *Fenton – Rūrīma Māori Reservation* (2004) 102 Whakatane MB 196 (102 WHK 196) at 201; *Powell – Tunapahore 6* (2015) 130 Waiariki MB 160 (130 WAR 160) at [11].

<sup>17</sup> *Perenara v Pryor – Matata 930* (2004) 10 Waiariki Appellate MB 233 (10 AP 233) at 242.

<sup>18</sup> *Ibid* at 243.

<sup>19</sup> *Ibid* at 242-243.

process. People were given fair notice of the meeting. Further, the meeting itself was facilitated by an independent chair appointed by the Court.

[28] Ms Roberts submitted that many beneficiaries were unable to attend to vote due to a tangi. Beneficiary attendance at meetings is always difficult. Indeed there had been difficulty convening the meeting on 21 March 2016 in terms of finding a time suitable to most people. However, this meeting was clearly notified and people had the opportunity to attend. I am satisfied that the beneficiaries had the opportunity to express their views at the 21 March meeting.

[29] Ms Roberts also submitted that the vote was supposed to be by ballot box. The minutes of the meeting clearly show that there was much discussion with regards to the voting process and when votes were made they were then checked in terms of who was eligible to vote.

[30] The support for each individual nominee is not clear. But what is clear is that most beneficiaries at the hui supported all three nominations being trustees. The result, where all three nominations were supported, provides this Court with an indication that those persons selected had broad beneficiary support (of those beneficiaries in attendance) to be trustees.

*Mr Thompson*

[31] Mr Thompson has previously been a trustee on this Trust. The applicant has made a number of claims against Mr Thompson in that he, along with other trustees, mismanaged funds. The allegations made by Ms Roberts, have been before this Court. As it stands those allegations made are unproven. There have been no findings of mismanagement or incompetence against Mr Thompson, when he was previously a trustee. Further, there are no current applications before this Court against Mr Thompson and the allegations Ms Roberts makes.

[32] Mr Thompson does have trustee experience. Mr Thompson is the current chairperson of Waiotu Lands Trust (farm) and is also a trustee on a whānau trust. Mr

Thompson explained to the Court that he has particular tikanga and reo skills that are beneficial in the Marae setting and would be of assistance to this trust.

[33] Mr Thompson has not been removed as a trustee, as alleged by Ms Robert. He was replaced, due to the fact that previously he did not obtain broad beneficiary support to remain as a trustee.

*Ms Hamilton*

[34] Ms Hamilton, is forthright and certainly passionate with regards to this land and the Marae. It is clear that her and Ms Roberts have had their differences.

[35] The main objection to Ms Hamilton's appointment, from Ms Roberts, are that Ms Hamilton:

- (a) has obstructed the trustees from performing their functions and duties;
- (b) she instigated a vote of no confidence in the trustees; and
- (c) has shown bad behaviour towards Ms Roberts.

[36] Basically, Ms Roberts is saying that she and Ms Hamilton cannot work together. I put this to Ms Hamilton who confirmed for the Court that, were she appointed, she would work with the other trustees for the purpose of the Marae and tupuna.

[37] Ms Hamilton has been the previous chairperson with the Paparamu Marae. She is currently a trustee on other trust. The information filed with Ms Hamilton's nomination discloses that she has a number of skills including skills in the finance area. Ms Hamilton was also an original research team member alongside her late father. They worked on the Waitangi Tribunal land claims in this area.

*Marama Thompson*

[38] There is no opposition to Marama Thompson's appointment. Marama Thompson has finance, audit and managerial skills. She has also stated in her nomination information that she can relate well with others and wants what is best for Te Apunga.

### **Decision**

[39] I consider that Marama Thompson, Gail Hamilton and Grant Mahirahi Thompson have the relevant ability, experience and knowledge to perform as trustees. There are no issues which would preclude any of them from being appointed as a trustee. Further, all have expressed a willingness and desire to work in the best interest of the land, the marae and its people.

[40] It is clear that there are tensions which exist between Ms Roberts and, Mr Thompson and Ms Hamilton. It is also clear that there has been some history of antagonism between Ms Roberts and the two proposed trustees - Mr Thompson and Ms Hamilton. There is therefore concern that if I am to appoint Mr Thompson and Ms Hamilton that the Trust may become dysfunctional and not able to operate.

[41] However, both Mr Thompson and Ms Hamilton indicated a willingness to work with other trustees in the best interest of their Marae. It is now for them to prove the worth of their words and to be true to that commitment they made, in Court, in front of their whānaunga.

[42] I do note that I did not ask Ms Roberts if she could work with Mr Thompson and Ms Hamilton. She has already stated in her submission that if Ms Hamilton and Mr Thompson were appointed as trustees she would have no option but to resign as she does not believe either are prepared to work constructively with the current trustees in the best interest of the Marae.

[43] It is incumbent on Ms Roberts to look to work with all trustees including Mr Thompson and Ms Hamilton. If I was to not appoint nominees because Ms Roberts contends that they cannot work with her – then the Court would be left in a position of only

appointing people acceptable to Ms Roberts. Being acceptable to Ms Roberts is not a criterion for trustee appointment. It is also now for Ms Roberts to show her skills and ability to work with her whānaunga.

[44] The Court makes orders pursuant to Te Ture Whenua Māori Act 1993:

- (a) Pursuant to section 239(1) appointing Marama Thompson, Gail Hamilton and Grant Mahirahi Thompson as responsible trustees to replace Jonathon Barrett who is deceased and Naumai Warren who has resigned; and
- (b) Pursuant to section 239(3) vesting the lands and assets in Jim Ngati, Leanne Harete Thompson, Marlene Orewa Roberts, Maureen Armstrong, Philomena Roberts, Marama Thompson, Gail Hamilton, and Grant Mahirahi Thompson, as responsible trustees of Okoroire 457N1 Māori Reservation.

#### **AGM to be completed**

[45] There are still AGM matters which have not been concluded. Now that the Court has appointed new trustees I am hopeful that the Trustees will be able to work together to convene an AGM so that the other matters (trustees report, financial report and general business) can be attended to. This will be the trustee's first test on how well they operate together.

[46] I remind all trustees that they, and their combined efforts, should be focussed on what is best for the land and the beneficiaries. Personal issues need to be put to the side.

Pronounced in Rotorua on Tuesday this 31<sup>st</sup> day of May 2016

C T Coxhead  
**JUDGE**