

**I TE KOOTI WHENUA MĀORI O AOTEAROA
I TE ROHE O AOTEA**

*In the Māori Land Court of New Zealand
Aotea District*

A20220004082

WĀHANGA <i>Under</i>	Section 19, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Paora-Āneti 17 & 18
I WAENGA I A <i>Between</i>	AROARO TAMATI Te kaitono <i>Applicant</i>
ME <i>And</i>	LEONIE HOND, RAWIRI JONES, DANIEL MANU, TANE MANU, FAY MULLIGAN, TE INGO NGAIA, PIKI NGĀWHARE, K KARLOS RUAKERE, TAARE RUAKERE, GRAHAM SANDS, AND MIROWAI TAINGAHUE AS TRUSTEES OF THE PUNIHO PĀ MĀORI RESERVATION Ngā kaiurupare <i>Respondents</i>

Nohoanga: 17 March 2022
Hearing (Heard at Whanganui via Zoom)

Kanohi kitea: A Tamati in person
Appearances S Maskill for Respondents

Whakataunga: 18 March 2022
Judgment date

TE WHAKATAUNGA Ā KAIWHAKAWĀ A H C WARREN
Judgment of Judge A H C Warren

Ki runga ki raro ki waho ki roto rire hau paimārire¹

Copies to:
S Maskill, Auld Brewer Mazengarb McEwen Lawyers, 9 Vivian Street, New Plymouth
Sean.Maskill@abmm.co.nz

¹ With spiritual and physical comes balance with balance comes peace and harmony.

Hei tīmatanga kōrero*Introduction*

[1] This decision determines an application for interim injunction to stop an advertised Annual General Meeting (“AGM”) in relation to Paora-Āneti 17 & 18 Reservation Trust, also known as Puniho Pā (“the Trust”) from occurring. The AGM is set for Sunday, 20 March 2022. It is therefore an urgent application.

[2] Although a new application, the Trust has been before the Court in recent times, including receiving a determination by then Judge Harvey regarding who may attend and vote at a recent Special General Meeting of the Trust. Eligibility issues are at the heart of this application.

Whakataunga*Outcome*

[3] I grant the interim injunction for the reasons and on the terms set out below.

Kōrero whānui me te hātepe ture o te tono nei*Background and Procedural history*

[4] A letter dated 11 March 2022 was filed by Aroaro Tamati with the support of 13 other beneficiaries, setting out the reasons for the injunction sought (“the letter”). The letter provides:

We as beneficiaries of Paora Āneti 17 & 18 and uri of Ngā Māhanga request an injunction by the Aotea Māori Land Court to prevent the holding of the upcoming AGM for Paora Aneti 17 & 18 on 20 March 2022. The reason for our request are our serious concerns about the unmandated changes that have been made to the rules on who has the right to vote. We hold the view that the Trustees have misunderstood the way ‘beneficiaries’ in the context of Papakāinga should be interpreted, impacting the eligibility of descendants to vote. We are also concerned about the meeting being required in-person only when Covid-19 restrictions will seriously restrict attendance.

[5] The applicants outlined what they saw as the key issues:

- (a) The AGM is unconstitutional because of the proposed rule changes (particularly the eligibility to vote) are being actioned without the mandate of beneficiaries/uri.
- (b) The voting and attendance processes being carried out for the Paora Aneti 17 & 18 AGM effectively act to restrict attendance and participation of beneficiaries/uri.

- (c) Clarity is needed on what is meant by the designation 'beneficiaries of Paora Aneti 17 & 18 and the hapū Ngā Māhanga'. The whakapapa and eligibility of a number of beneficiaries is being challenged without scrutiny or evidence.

[6] The letter was sent to all trustees by email (via the Trust's secretary) from the Pae Tukutuku on 14 March 2022.

[7] On the same day, the letter was referred to me for directions. My directions were:

- (a) That the Pae Tukutuku was to confirm that the letter was received by the trustees;
- (b) The trustees were to respond to the application for an injunction by 5pm on Wednesday 16 March 2022; and
- (c) That the matter to be set down for a special hearing at 3pm on Thursday 17 March 2022, via Zoom.

[8] I also advised the parties that I would waive the need for the applicants to file an affidavit or statutory declaration per r 9.6 of the Māori Land Court Rules 2011, on the basis that I was going to hold a formal hearing.

[9] All parties acknowledged receipt of these directions.

[10] On 16 March 2022, Sean Maskill, counsel for the trustees, filed a notice of opposition which was also sent to the applicants.

[11] The Notice of Opposition confirmed that:

- (a) The Trustees have not restricted the right of beneficiaries to vote. As set out in the notice of the AGM, beneficiaries of Paora Aneti 17 and 18 will be entitled to vote at the AGM. The Trustees consider that this means those recorded on the ownership interest list of the land maintained by the Māori Land Court and those persons that whakapapa to Ngā Māhanga;
- (b) The Trustees have validly called an Annual General Meeting and have given 21 days' notice of the time, place, and agenda of the meeting in accordance with clause 27.1 of the Paora Aneti 17 and 18 Māori

Reservation Charter (**the Charter**) and regulation 17 (1)(a) of the Māori Reservation Regulations 1994 (**the Regulations**).

- (c) The AGM must be held in compliance with the Covid-19 Public Health Response (Protection Framework) Order 2021 in particular the rules applying under the red traffic light setting. These rules include a capacity limit of 100 people for events and gatherings using the CVC-rules.
- (d) The Trustees considered whether, in the circumstances, the AGM could be held via Zoom. The Trustees considered that they "currently don't have the technical capacity to set this up as a functioning tool."
- (e) The Trustees considered that a registration process is required for an in-person AGM under the red traffic light setting. The registration process is to email secretary@punihoko.co.nz to register your attendance.
- (f) The respondent relies on the Paora Aneti 17 and 18 Māori Reservation Charter and the Māori Reservation Regulations 1994.

[12] In advance of the hearing, I directed the Pae Tukutuku to send to all parties:

- (a) A position paper produced by the Court; and
- (b) Some specific questions I wanted the parties to address at the hearing, which arose from the material filed by both sides.

[13] I then convened a hearing online at 3 pm on Thursday, 17 March 2022.

[14] For the applicants, I heard from Aroaro Tamati, Ruakere Hond, and Roena Ruakere TeUira. For the trustees, I heard from David Jones (chairman) Sean Maskill (counsel) and Te Ingo Ngaia (secretary).

[15] In closing arguments, both parties made proposals to resolve the impasse regarding the AGM. I invited the parties to reflect on the respective proposals and to advise me by 9am today of their final positions. Their positions have not changed and thus I am now required to determine the application for an interim injunction.

Ngā take
The issues

[16] The sole issue is whether I should grant an interim injunction to prevent the AGM proceeding this Sunday.

[17] The main underlying issue is the question of who qualifies as a beneficiary of the Trust and who has the right to attend and vote, in this context, at the advertised AGM of the Trust (“the eligibility issue”).

Te Ture
The Law

[18] I have jurisdiction to grant an interim injunction per s 19 of Te Ture Whenua Māori Act 1993 (“the Act”). I also have jurisdiction per s 238 of the Act to enforce the obligations of trustees and may do this by way of injunction or otherwise.

[19] Given the nature of what the Court is being asked to do, on its face, s 19 of the Act is not applicable. However, per s 237 the Court can exercise the powers of the High Court including exercising inherent jurisdiction.²

[20] In an application for an interim injunction, the applicant carries the burden to demonstrate that:³

- (a) There is a serious question to be tried;
- (b) The balance of convenience is in favour of an injunction; and
- (c) It is in the interests of justice to grant an injunction.

[21] I consider these in turn

He pātai Motuhake hei whakawā?
Is there a serious question to be tried?

[22] Whether or not there is a serious question to be tried turns upon whether there is a tenable combination of matters of fact and law upon which the application could succeed.

² See for example *Proprietors of Mangakino Township v Māori Land Court* CA65/99, 16 June 1999; *Mikaere – Toto v Te Reti B and C Residue Trust – Te Reti B and Te Reti C* [2014] Māori Appellate Court MB 249 (2014 APPEAL 249); *Slade – Parengarenga 3G* (2014) 87 Taitokerau MB 46 (87 TTK 46); and *Nikora v Tūhoe Te Uru Taumatua* [2020] Māori Appellate Court MB 248 (2020 APPEAL 248).

³ *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd* [1985] 2 NZLR 129 (CA).

[23] At the outset, I note that there was no substantive application before the Court, which in most circumstances is necessary for the Court to consider interim injunctive relief. Of course an interim injunction is just that, interim, until the substantive claim is resolved. Although this issue was not raised by Mr Maskill, I address it for completeness.

[24] I find that the absence of a substantive application, is not fatal to the application for interim relief in these circumstances. Firstly, there is a clear question that requires determination, namely the eligibility issue. Both parties agreed that this was the major underlying issue and they accepted that there was no clear mechanisms to resolve whakapapa disputes in defining uri of Ngā Mahanga. It was this issue that promoted the urgent injunction application.

[25] Both parties requested the assistance of the Court to determine this issue and, given this, I find that there is a substantive matter before me. In fact, Ruakere Hond for the applicants invited me to assist the beneficiaries by considering how the Trust can resolve whakapapa issues that arise as it relates to the eligibility issue. Also, Mr Maskill in his post hearing response noted:

...irrespective of the outcome of this application, the trustees would appreciate further assistance from the Court regarding who is entitled to vote at a general meeting of Paora Aneti 17 and 18 Māori Reservation.

[26] Therefore, there is a serious question to be tried. I find that the eligibility issue is a significant one; it has merit and is one that will be vital to resolve for the smooth functioning of this Trust going forward.

[27] What fortifies my view of the significance of this issue, is the acceptance by the trustees that:

- (a) Their advertisement for the AGM was prepared on the basis that they had decided to restrict who could attend and vote at the AGM;
- (b) Their decision was apparently based on advice by staff of the Māori Land Court and it is not clear what the basis of that advice was; and

- (c) They did not get formal legal advice and/or engage with the beneficiaries, knowing full well that their decision would be a controversial one for some beneficiaries.

[28] Finally, there is also a serious question in regards to the AGM process adopted by the trustees that formed the basis of this injunction application. That said, this issue may become nugatory given the deferral of the AGM, but I do have some concerns about how the trustees got themselves into this position. But because this is an application for interim relief, I will leave these matters for the next phase.

Te taurite o te take

Balance of convenience

[29] As to the balance of convenience, I find that there is more likely to be an injustice and inconvenience by not granting the interim relief. That is, if the AGM proceeds in its current form, there is a fair chance that I will find there were substantive and procedural flaws, potentially invalidating the AGM and the specific resolutions made, creating the need to re-run it at more cost and delay for all.

[30] There is also a chance that the AGM will be fraught with elevated mistrust, given the revelation at the hearing that the trustees did deliberately change the voting requirements, (based on advice from the Māori Land Court staff). There is also the real risk that some beneficiaries will not understand whether they can attend or not, creating further injustice and confusion. In reality the trustees have created a rod for their own backs by;

- (a) Failing to get proper advice before they made their decision to change the voting eligibility requirements;
- (b) Not placing the AGM advertisement on their Facebook page as they had resolved to do; and
- (c) Failing to arrange an online platform for an AGM in the Covid context, when it seemed there were options available for this happen.

[31] Added to this, the context of ongoing raruraru about the eligibility issues suggests in my mind that the trustees have not managed this entire AGM process well.

[32] I do not accept the submission made by Mr Maskill on behalf of the Trust that because the AGM advertisement could be interpreted as including all beneficiaries as per the Charter, the AGM should proceed as there will be no prejudice to the applicants and other beneficiaries. That view fails to acknowledge that the Chair of the Trust confirmed in evidence that the intention of the trustees was to restrict the beneficiaries who could attend the AGM and framed the advertisement in that manner, even if one could interpret it both ways. That intention now colours all matters as it relates to the AGM. Put another way, the applicants were right to raise the question as they were not clear themselves as to what the advertisement meant. They now know and their concerns have been justified.

[33] In the Māori world, tikanga is as much about process as it is about the substantive outcomes. Some would argue that process is more important, with values such as mana and whanaungatanga being pervasive parts of hui Māori. I cannot see any enhancement of mana or the maintenance of relationships as between the beneficiaries if I allow the AGM to proceed this Sunday.

[34] That said, I am very mindful of the evidence that the Trust needs to move things along and it needs to approve financial reports for future funding purposes. I am also mindful that around 80 beneficiaries have already registered for the AGM, according to the evidence of the Trust's secretary. However, I did not get the sense that deferring the AGM for a short period would cause serious issues for the Trust. While there has already been delay to the AGM due to Covid, delay for many Māori land based entities has become the reality in these Covid times and a few more weeks will not, in my view, create serious injustice.

[35] In fact, delaying the AGM to allow the Court time to clarify who should be eligible to attend and vote at the AGM and to correct the advertisement as well as sourcing online options, is consistent with the Court's role of promoting practical solutions per s 17(f) of the Act.

Kei whea te aronga o te tika me te ture

Where do the interests of justice lie?

[36] The interests of justice lie in granting an interim injunction. An injunction that will only defer the AGM for a short period of time.

[37] When I stand back and assess what is going on here, I am concerned that the trustees have misunderstood their responsibilities, including the duty to get proper legal advice when significant decisions are going to be made. Relying on advice from staff of the Māori Land Court only, as confirmed by the Trust Chair Mr Jones, was an error of judgment, when all trustees should have been aware, that adopting that advice would naturally create serious issues for some beneficiaries. And of course it did. Trustees must treat all beneficiaries fairly. I do not think this has been achieved through the recent decisions of the Trust and the way the AGM preparations have been managed.

[38] I find that justice is served by delaying the AGM and placing it on a footing that is tika and clear. It is neither at the moment.

[39] Finally, I am pleased that the Trust now has competent legal advice and I would encourage the trustees to continue to engage Mr Maskill as we move into addressing the substantive issues.

Kupu whakatau

Decision

[40] I grant the application for an interim injunction.

[41] Per ss 237 and 238 of the Act and the Court's inherent powers to supervise trusts, I make an order prohibiting the trustees of the Trust from holding the AGM scheduled for Sunday, 20 March 2022. The AGM is to be postponed until further order of the Court.

[42] Per s 238 of the Act, I direct Mr Maskill on behalf of the Trust, to file a report by 5pm on Monday, 21 March 2022 covering the following:

- (a) proposed new date for the AGM (noting that the Trust will still need to comply with its Charter and the Regulations as to notice)

- (b) A draft revised advertisement (noting that the Court will determine the eligibility issue for AGM purposes)
- (c) An advertisement plan confirming where the notices will be placed; and
- (d) Options for having zoom or similar for beneficiaries to attend the AGM.

[43] I also direct that the trustees place a notice on their Trust Facebook page and send emails to beneficiaries they have details for, advising that the AGM is postponed until further notice. I also direct that the trustees send to as many beneficiaries as possible a copy of this decision, so that they are clear why the AGM has been postponed to avoid further confusion.

[44] I also direct the applicants to file a formal application seeking the Court's assistance with the eligibility issue. This should be filed by 5pm on Thursday 24 March 2022.

[45] Once I receive the above information from Mr Maskill, and the application requested I will issue further directions as to next steps. It is likely that I will call a judicial conference so that we may discuss matters as well as the game plan for dealing with the eligibility issue.

[46] For the avoidance of doubt, matters relating to when and how the new AGM will be undertaken are matters for the trustees and the Court at this time, acknowledging that the applicants will be involved in any discussions around who is eligible to attend and vote at the AGM. In that respect, I direct the Pae Tukutuku to send a copy of the memorandum filed by Mr Maskill to Mrs Tamati as a representative of the applicants and a copy of the application filed by the applicants to Mr Maskill.

Mauriora

I whakapuaki i te 5pm i Tāmaki Makaurau te 18 o ngā rā o March i te tau 2022.
Pronounced at 5pm in Auckland on this 18th day of March 2022.

A H C Warren
JUDGE