

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

A20150005054

A20150005056

UNDER Section 240 of Te Ture Whenua Māori Act
1993

IN THE MATTER OF Pt Rangitikei Manawatu Pt B4 being Lot 1 DP
4102 (Old Post Office) Trust, Pt Rangitikei
Manawatu B4A Reservation and Rangitikei-
Manawatu B4 Part (Rangiotu School)
Reservation

BETWEEN TOHE NEPIA TARATOA MANAWAROA TE
AWE AWE, ALAN JAMES HORSFALL,
WIREMU KINGI TE AWE AWE III,
REBECCA MARIA HUNT, TOHE NEPIA
TARATOA MANAWAROA TE AWE AWEM
MARY JANE SCOTT AND NUWYNE KIRI
TE AWE AWE MOHI as trustees
Applicants

AND BRIGITTE TE AWE AWE-BEVAN
Respondent

Hearings: 345 Aotea MB 22 dated 18 November 2015
348 Aotea MB 95 dated 20 January 2016
349 Aotea MB 193 dated 9 March 2016
(Heard at Palmerston North)

Appearances: The Trustees in person
M Sinclair for the Respondent

Judgment: 17 June 2016

RESERVED JUDGMENT OF JUDGE L R HARVEY

Introduction

[1] The trustees of Rangitikei Manawatu Pt B4 Trust and Pt Rangitikei Manawatu B4A Reservation and Rangitikei-Manawatu B4 Part (Rangiotu School) Reservation seek the removal of Brigitte Te Awe Awe-Bevan as a trustee. They say that she has not attended trustee meetings for two years, has failed to comply with trustee requests for information, has displayed a lack of cooperation and participation and has failed to perform her role as secretary and treasurer in a satisfactory manner.

[2] Ms Te Awe Awe-Bevan denies the allegations. She says that she has kept proper financial reports and has complied with requests from her fellow trustees. The respondent further submits that she has participated as a trustee and has attended meetings to the fullest extent possible within the given circumstances. Ms Te Awe Awe-Bevan argues that this attempt to remove her is unfounded and displays a lack of loyalty to a whānau member who she says has achieved much for the hapū.

[3] Ms Te Awe Awe-Bevan filed a letter of resignation dated 13 January 2016. Notwithstanding the letter the trustees requested that the application for removal be heard and determined. The final hearing was held on 9 March 2016.¹

Issue

[4] The issue for determination is whether or not the respondent should be removed for cause as a trustee. The following questions are relevant:

- (a) Did the respondent fail to attend meetings without reasonable excuse?
- (b) Was the respondent's performance as a trustee unsatisfactory?

Background

[5] The trustees administer three blocks of Māori freehold land situated in the Manawatu region. Two are set aside as Māori reservations and one is administered by an ahu whenua trust. Pt Rangitikei Manawatū B4A Māori Reservation block was created by partition order on 13 June 1956.² It was set apart as a Māori Reservation on 15 March 1979

¹ 349 Aotea MB 193 (349 AOT 193)

² 66 Ōtaki MB 260 (66 OTI 260)

for the purposes of a burial ground, recreation ground, and church site, for the common use or benefit of the descendants of Wiremu Kingi Te Awe Awe and Manawaroa Te Awe Awe.³

[6] Rangitikei-Manawatu B4 Part (Rangiotu School) block is a former school site. The land was vested back in trustees as a place of learning for the descendants of Wiremu Te Awe Awe and Manawaroa Te Awe Awe on 11 June 2003.⁴ On 29 January 2004 the block was set apart as a Māori reservation for that purpose.⁵

[7] Rangitikei Manawatu Pt B4 being Lot 1 DP 4102 (Old Post Office) block was originally acquired by the Crown in 1915 for a post office from Manawaroa Te Awe Awe and Wiremu Kingi Te Awe Awe. It was then purchased by the Māori Trustee for Māori Housing purposes for the successors of the original owners. On 4 May 1992 the Court vested the land back in the successors and constituted a s 438 trust to administer the block.⁶

[8] The current trustees are Allan James Horsfall, Brigitte Te Awe Awe-Bevan, Rebecca Maria Hunt, Tohe Nepia Taratoa Manawaroa Te Awe Awe, Wiremu Kingi Te Awe Awe III, Mary Jane Scott and Nuwyne Kiri Te Awe Awe Mohi.⁷

Procedural history

[9] The application was first heard on 18 November 2015.⁸ An adjournment was granted given that the respondent was overseas at the time and unable to attend the hearing.

[10] The application was next heard on 20 January 2016.⁹ At the hearing the respondent claimed that she had not received a copy of the documents filed by the trustees. The proceedings were then adjourned to March 2016. During that time the respondent was to file her reply, following which the trustees could also file any additional submissions in response.

³ “Setting Apart Maori Freehold Land as a Maori Reservation” (15 March 1979) 18 *New Zealand Gazette* 557 at 571

⁴ 128 Aotea MB 125 (128 AOT 125)

⁵ “Setting Apart Maori Land as a Maori Reservation” (29 January 2004) 9 *New Zealand Gazette* at 180 see also “Corrigendum - Setting Apart Maori Land as a Maori Reservation” (29 April 2004) 46 *New Zealand Gazette* at 1165

⁶ 23 Aotea MB 62 (23 AOT 62)

⁷ 335 Aotea MB 113 (335 AOT 113); 335 Aotea MB 108 (335 AOT 108); and 335 Aotea MB 118 (335 AOT 118)

⁸ 345 Aotea MB 22 (345 AOT 22)

⁹ 348 Aotea MB 95 (348 AOT 95)

[11] On 9 March 2016 a final hearing was held.¹⁰ The respondent was not present but a further statement of reply had been received. At the conclusion of the hearing I confirmed to the trustees that they needed to file a written response to the matters set out in the respondent's statement of reply, and following that I would issue a decision.

Did the respondent fail to attend meetings without reasonable excuse?

Applicants' submissions

[12] As foreshadowed, the trustees submit that Ms Te Awe Awe-Bevan should be removed because she has not attended trustee meetings for two years. They also say that she has been non-compliant, has displayed a lack of cooperation and participation and has performed her role as secretary and treasurer in an unsatisfactory manner. The trustees say that they have been lenient with the respondent and did not take any formal steps against her for some time as they sought to try to resolve the situation without recourse to Court.

[13] In a letter to the Court dated 7 February 2016, Tohe Te Awe Awe, chairperson of the trusts, reiterated the request for removal was based on the three allegations set out in the original application. Mr Te Awe Awe further stated that the respondent's failure to comply with the request to provide all the trustees with the financial records caused considerable disruption to the ongoing operations of the trusts.

[14] In addition, the trustees argue that at no time prior to the 28 March 2015 request for a one year leave of absence did the respondent approach the trustees to explain that she was not expecting to be able to carry out her trustee duties due to her study commitments. The trustees consider that the respondent's decision to pursue full time study in 2013 was probably made in late 2012.

[15] The trustees further argue that the respondent simply failed to attend meetings and say that this commenced during the latter part of 2013 when she began living permanently in Auckland. The trustees submit that the respondent should have resigned from her position once she became aware that she was not going to be able to attend most of the trustee meetings nor attend to her responsibilities.

[16] The trustees contend that despite the respondent's claim that she did not receive emails informing her of meeting times she should have known that the trustees meet

¹⁰ 349 Aotea MB 193 (349 AOT 193)

regularly and she should have taken the initiative and contacted someone if she was not receiving notices. They acknowledge that, while there may have been occasions where the trustees failed to email the respondent they do not accept that the regular emails that were sent to her were not received. The trustees submit that while the respondent did tender her apologies for meetings she in no way attempted to reacquaint herself in any meaningful way with the activities of the trust.

Respondent's submissions

[17] Ms Te Awe Awe-Bevan filed a statement of response on 15 January 2016. She explained that she is tangata whenua from Rangimarie, Ranitepaia of Rangitāne o Manawatu. The respondent is the daughter of Wiremu Te Awe Awe – Larkins and Jackie Te Awe Awe – Larkins.

[18] The respondent also sets out her extensive academic qualifications which she says are in the fields of education, Māori studies, philosophy and theology. Ms Te Awe Awe-Bevan says she is currently studying to become a Priest. She further says that she has a long history of providing service to her hapū and iwi and intends to return to work with her community upon completion of her Bachelor of Theology.

[19] As to the allegation of non-attendance, Ms Sinclair submits that her client did not receive all notices of meeting times and any changes, and in any case was reluctant to be present at meetings due to the “vexatious” approach she encountered with some of the trustees. Apologies were always conveyed where Ms Te Awe Awe-Bevan could not attend.

[20] In addition, counsel contends that her client’s unavailability was due to her having competing commitments. Ms Sinclair argues that the respondent advised the trustees of this and requested attendance via Skype which was denied. Added to this is the fact that the respondent also requested one year of leave from acting as a trustee which was ignored until the lodging of the original application eight months later.

[21] Further, counsel submits that the respondent’s mother suffered from a serious illness from 2010-2015 which required her to spend substantial time travelling to support her mother and her fellow trustees were aware of the circumstances. Counsel confirmed that her client also became very unwell between 2010 and 2012 and sought to avoid stress during this time that arose from her conflict between trustees. Ms Sinclair submits that the trustees were also aware of these circumstances.

The Law

[22] In *Hape v Smith - Part Te Pupuke K No 2 (Māori Reservation)* Judge Armstrong dealt with an application for removal of a Māori reservation trustee for non attendance.¹¹ He took into account reg 6 of the Māori Reservation Regulations 1994 which provides:

6 Duty of trustees

It shall be the duty, at all times, of the trustees to act in good faith in the exercise of their powers under these regulations, and to administer the reservation in respect of which they are appointed—

- (a) in such manner as will promote the purposes for which the reservation is set apart; and
- (b) for the benefit of the persons for the time being entitled to the use and enjoyment of the reservation; and
- (c) in accordance with the Act and these regulations, and any order of the court in relation to the reservation.

[23] Judge Armstrong noted that reg 6 reflects the general obligation on trustees to carry out their terms of trust and to administer and manage the business of the trust. In addition, he considered regulation 17(b):

17 Provisions applicable where trustees are not body corporate

Where the trustees are other than a body corporate as sole trustee, then, subject to any order of the court,—

...

- (b) the trustees shall otherwise meet for the dispatch of business at such times and places as the trustees consider appropriate:

[24] It was implicit within reg 17, and in accordance with the general practice of trusts constituted by the Māori Land Court, the Judge found, that trustees must attend trustee meetings in order to administer trust business and to carry out their duties as trustees.¹² If a trustee continually fails to attend trustee meetings without reasonable explanation or excuse that trustee is failing to carry out his or her duties satisfactorily.¹³

Discussion

[25] There is no dispute that Ms Te Awe Awe-Bevan has not attended trustee meetings for some time. The issue is whether there is any reasonable explanation or excuse for her failing to attend and even so, if such a prolonged absence exceeding 12 months was reasonable. Ms Te Awe Awe-Bevan argues that she was not notified of all meetings and, that she tendered apologies for her absence where possible. She also claims that she formally requested a one

¹¹ (2015) 99 Taitokerau MB 174 (99 TTK 174)

¹² Ibid at [35]

¹³ Ibid

year leave of absence to which the trustees did not respond to until some eight months later. Ms Te Awe Awe-Bevan says she requested attendance via Skype but this was refused.

[26] The trustees submit that the request for a leave of absence was not made until 28 March 2015. They say that by this time Ms Te Awe Awe-Bevan had already been absent from meetings for over a year. They consider that the respondent should have known as early as 2013, when her studies began, that she would not be able to carry out her trustee duties due to her study commitments. The trustees submit that Ms Awe Awe-Bevan should have resigned when it became obvious that she would not be able to meet her commitments.

[27] In my assessment, it would appear that Ms Te Awe Awe-Bevan has given her full commitment to her studies which is understandable, given the costs involved, and her personal circumstances including health challenges for herself and her mother. This is equally unsurprising. However, and quite understandably, this appears to have come at the expense of her duties as a trustee. I consider that it would have been reasonable for the trustees to have an expectation that the respondent would step down from her role as secretary-treasurer and as a trustee when it became obvious that she was not going to be able to attend trustee meetings for such a prolonged period. The trustees argue that Ms Te Awe Awe-Bevan should have known that the trustees meet regularly and should have contacted someone if she was not receiving notices.

[28] The email correspondence confirms that Ms Te Awe Awe-Bevan requested attendance via Skype on or about February 2015. By this time the correspondence filed with the Court demonstrates that the respondent had not attended a meeting for close to a year. In many cases her apologies are noted in the minutes. It is also acknowledged that there were times when Ms Te Awe Awe-Bevan was not made aware of meetings. In relation to the request to attend via Skype, though a reasonable request, it was relevant that the hui venue may not have allowed for such communication. Skype is dependent on a reliable internet connection and such an option is not always available. Further, the trustees say that they were told Skype was not appropriate to use on a regular basis for trust hui.

[29] The trustees reject the claim by Ms Te Awe Awe-Bevan that she did not attend meetings because of the vexatious behaviour of the trustees. They say the respondent has provided no details to support such a claim and add that they were frustrated by her failure to return the financial records and her lack of activity due to her other commitments.

[30] I consider that the respondent was aware of many of the meetings which are evidenced by her apologies being noted in the minutes. In addition, it is not a reasonable excuse to fail to attend hui because of alleged “vexatious” behaviour. It was always open to Ms Te Awe Awe-Bevan to seek directions from the Court if she felt uncomfortable or otherwise unable to attend trustee hui. Equally important, while the respondent may have requested leave of absence, which she was perfectly entitled to do, that was never granted by the trustees. There was no ability for her to unilaterally grant herself leave of absence from her trustee role without the consent of either the trustees or the Court and even then, it would be an unusual request where the obvious remedy would be to resign and submit to re-election if that opportunity arose in the future.

[31] In light of the circumstances I conclude that Ms Te Awe Awe-Bevan has provided explanations for her non attendance on a number of occasions. However, she should have resigned from her roles as treasurer-secretary and trustee when she relocated to Auckland and was no longer able to attend meetings. That would have been the most appropriate step for her to take, considering all of the relevant circumstances, including the reality that she was by that time no longer living in the Manawatu region and that she also had medical issues to manage. The short point is that her competing commitments required her full attention with the result that she simply did not appear to have any real time available to devote to her important duties as a trustee and as an office holder of the trust. She acknowledged this herself by asking for an extended “leave of absence” from the roles she undertook to fulfil.

Was the respondent’s performance as a trustee unsatisfactory?

Applicants’ submissions

[32] The trustees express regret at not being able to resolve the issue outside the Court however they believe the most appropriate way forward is for the application to be formally determined. The trustees further confirm that given the respondent’s resignation no further replacement trustees are required as they say they have a full complement. In addition, the trustees say that elections will be held in March 2017 in line with the trusts’ five yearly electoral cycle.

[33] Turning to the issues, the trustees say that in 2014 they realised that without a trustee carrying out the roles of secretary and treasurer the trusts were going to struggle to function effectively. To that end they elected two new trustees – Nuwyne Te Awe Awe Mohi and Mary Jane Scott as treasurer and secretary respectively.

[34] Then on 21 May 2014 the Chairman of the trust wrote to the respondent to request that she deliver all the trusts' financial documents to Nuwyne Te Awe Awe Mohi by 27 May 2014 in order that the trusts could continue to function. Alan Horsfall also spoke with the respondent about the request. The applicants point to email correspondence between Nuwyne Te Awe Awe Mohi and the respondent, and also Alan Horsfall and the respondent, to show that the request for the financial information was of the utmost importance. However, they say that by November 2014 the respondent had not attended a meeting for over a year and had not replied satisfactorily to their requests.

[35] The trustees submit that Te Ms Awe Awe-Bevan has failed to comply with requests for the provision of information and has failed to perform her duties as secretary and treasurer of the trust satisfactorily. In particular, they submit that the respondent failed to hand over the financial records for the trust within a reasonable time. By 21 May 2014 there were outstanding debts which needed to be paid and which had not been attended to by the respondent. They add that they had no financial information about the accounts or cheque books to be able to check the financial position of the trust.

[36] The trustees submit that they do not know when the records were delivered to the accountants and have second hand information that the records were received but they were not organised in any meaningful way that enabled the accountant to use the records to put together the annual financial statements. The respondent they say should also have let the trustees know when the information was delivered to the accountants.

[37] The trustees further state that given that they did not receive a reply from Ms Te Awe Awe-Bevan by June 2014 they were required to organise a change of signatories for the accounts and issuing of cheque books so they could continue to operate. They add that Alan Horsfall had to spend significant time piecing together the information required for the accountant as the material supplied by the respondent was incomplete. The trustees say that eventually the financial affairs of the three trusts were resolved but only after considerable frustration, difficulty and anxiety caused to them as a result of the failure by Ms Te Awe Awe-Bevan to fulfil her duties.

[38] Regarding incompetency allegations against Nuwyne Te Awe Awe Mohi, the trustees say that these are without foundation. The circumstances regarding the Marae Trust account had nothing to do with Nuwyne Te Awe Awe Mohi and the matters concerning rental arrears are the responsibility of the tenants. In any event, they say the respondent did not raise any concerns with the trustees about this issue.

[39] Turning then to claims of unsatisfactory performance, the trustees argue that Ms Te Awe Awe-Bevan failed to fulfil her role as treasurer adequately for a significant period of time as evidenced by the fact that there were a large number of bank statements missing from the information delivered to the accountants. They say that the respondent took no steps to set in motion the completion of the annual financial statements for the three trusts for the financial years ended 31 March 2012 and 31 March 2013, which they regarded, implicitly, as a dereliction of duty.

[40] Regarding claims of vexatious behaviour by trustees, the trustees submit that Ms Te Awe Awe-Bevan has provided no particularised information. They reject that claim and further add that frustrations arose because financial information was not being provided.

[41] Finally, the trustees confirm that they were surprised to learn that both trusts did not have IRD numbers as required for income producing trusts. They say Nuwyne Te Awe Awe Mohi has subsequently discussed with IRD the requirements for the trusts, the issuing of IRD numbers and avoidance of interest and penalties. There were also discrepancies with money from the ahu whenua trust account being used to pay bills for the Marae trust, they say.

Respondent's submissions

[42] Ms Sinclair submits that all reasonable requests from trustees were complied with and acknowledges that at times compliance was compromised due to communication breakdowns. Counsel further submits that Ms Te Awe Awe-Bevan ensured all records she held were copied and available to the other trustees. The request to provide the financial documents was not complied with as the respondent says she had reservations about the competency of Nuwyne Te Awe Awe Mohi.

[43] Turning then to the unsatisfactory performance claims, counsel argues that her client participated and cooperated to the fullest possible extent, within the constraints of a non-communicative and partially hostile group of trustees. Ms Sinclair points out that from 2008-2014 Ms Te Awe Awe-Bevan volunteered as secretary and treasurer for the trusts and further notes that in 2012 the trust was reviewed and was found by the Court to be operating satisfactorily.

[44] Ms Sinclair also submits that in 2014 Ms Te Awe Awe-Bevan and her husband Mr Bevan assisted with the treasury role throughout the handover to Nuwyne Te Awe Awe Mohi. She therefore rejects the allegation that she left the trusts' financial documents in a

carton on a door step and further submits that the documents were handed to Darryl Pinny Chartered Accountants. The cheque book and accounts were also delivered to Mark Pinny who worked at his father's office. Counsel reiterates that the respondent kept healthy finances while acting as secretary-treasurer and met all her financial responsibilities. In addition, she claims that all bank statements were accessible to the trustees by request to the Bank.

[45] Counsel filed a further statement of reply on 7 March 2016, in response to the letter filed with the Court by Tohe Te Awe Awe on 7 February 2016. In that statement counsel says that the trustees incorrectly allege that the respondent did not supply financial records. In supplying the information to the accountant Darryl Pinny and a fellow trustee Alan Horsfall, the respondent was complying with the request to send the documentation to whomever she felt comfortable with.

[46] Ms Sinclair also submits that her client's reservations about Nuwyne Te Awe Awe Mohi's competency are founded on events that occurred in 2008 when the latter was acting treasurer for the Marae Trust which ended up in debt. Ms Te Awe Awe-Bevan believes that mismanagement contributed significantly to the loss. In 2014 Nuwyne Te Awe Awe Mohi took responsibility for the accounts. The respondent submits that since then the rental account has fallen into arrears.

[47] Counsel then argues that Ms Te Awe Awe-Bevan has caused no disruption to the ongoing operation of the trusts but, she says, much disruption has been caused to the respondent as a result of this application. Ms Sinclair also submits that the allegations made in the original application amount to defamation and false accusations.

The Law

[48] Regulation 3(f) of the Māori Reservation Regulations 1994 provides:

3 Trustees

Any trustee for the time being appointed, by order of the court, in relation to any reservation,—

...

(f) may be removed from office by order of the court made at any time and shall cease to hold office from such time as the order shall specify:

[49] Section 240 of Te Ture Whenua Māori Act 1993 also applies:

240 Removal of trustee

The Court may at any time, in respect of any trustee of a trust to which this [Part] applies, make an order for the removal of the trustee, if it is satisfied—

- (a) That the trustee has failed to carry out the duties of a trustee satisfactorily;
or
- (b) Because of lack of competence or prolonged absence, the trustee is or will be incapable of carrying out those duties satisfactorily.

[50] In *Perenara v Pryor – Matata 930*, the Māori Appellate Court held that the provisions of the Act relating to trusts generally apply even to Māori reservations per s 236 of the Act which declares that ss 237-245 of the Act apply to every trust constituted in respect of any Māori land.¹⁴

[51] The settled approach in applying s 240 is to make an assessment of the standard trustees' duties together with an assessment of the trustee's performance.¹⁵ The prerequisite for removal of a trustee is not a simple failure or neglect of duties, but a failure to perform them satisfactorily.¹⁶ In determining whether removal is appropriate I will also need to consider the impact of the trustee's actions on the beneficiaries and any apprehension of risk to the assets.¹⁷

Discussion

[52] The correspondence filed by both parties supports the fact that the trustees were clearly concerned with the operation of the trusts' accounts and their ability to function with the continued absence of their secretary and treasurer from trustee meetings. It was reasonable therefore for the trustees to ensure new trustees were appointed to those roles, given Ms Te Awe Awe-Bevan's absence.

[53] The evidence confirms that the Chairperson of the trusts wrote a letter to Ms Te Awe Awe-Bevan requesting the financial information on 21 May 2014. As far as I can discern that information was not provided until November 2014, a period of six months – hardly satisfactory. It was unreasonable for the respondent to delay in providing the information requested for a period approaching six months. Ms Te Awe Awe-Bevan as treasurer had a duty to oversee the accounts. If the trustees were unable to pay debts when they fell due this was unacceptable. An interim arrangement was then required to manage this situation.

¹⁴ (2004) 10 Waiariki Appellate MB 233(10 AP 233) at MB 239

¹⁵ *Rameka v Hall* [2013] NZCA 203 at [30]

¹⁶ *Ibid*

¹⁷ *Ibid* at [33]; see also *Bramley v Hiruharama Ponui Inc – Committee of Management - Hiruharama Ponui Incorporation* (2006) 11 Waiariki Appellate MB 144 (11 AP 144)

[54] It is fortunate that in this case the delay in appointing new persons to the treasurer and secretary roles and the provision of the financial information has not resulted in any loss to the trust. The trustees have confirmed that challenges arising with IRD have been avoided and the trust is now operating properly.

[55] My conclusion is that, despite her best efforts in the circumstances, Ms Te Awe Awe-Bevan did not perform all of her duties satisfactorily. A request for a leave of absence for one year, while laudable and understandable, was not reasonable. As foreshadowed, given the respondent's own health commitments regarding her mother and herself, combined with her obligations to her studies and her move to Auckland, it was simply untenable for her to remain a trustee. In any event, as the respondent has tendered her resignation there is no need for an order per s 240 of the Act. That said, to avoid doubt, had Ms Te Awe Awe-Bevan not resigned, she would have been removed.

[56] One final point. The trustees should never have allowed the present situation to remain unresolved for over a year. They could have sought directions at any time to alert the Court to the unsatisfactory state of affairs that had been allowed to develop. They must accept some responsibility for these events, given the significant delay between the difficulties that they had been experiencing and the eventual filing of an application.

Decision

[57] Pursuant to s 239 of Te Ture Whenua Māori Act 1993 there is an order reducing the number of trustees as Brigitte Te Awe Awe-Bevan has now resigned.

[58] The application is concluded and dismissed.

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

Pronounced at 2 pm in Hastings on Friday this 7th day of June 2016

L R Harvey
JUDGE