

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

A20200007202
APPEAL 2020/5

WĀHANGA <i>Under</i>	Section 58, Te Ture Whenua Māori Act 1993
MŌ TE TAKE <i>In the matter of</i>	Lot 5 Deposited Plan South Auckland 15580 (Mangakino Pouākani Marae)
I WAENGA I A <i>Between</i>	ALAN TE MAARI, ANAHERA PEDERSEN, ERINA TE MAARI, IRIHAPETI KING, LOIS SHELTON, MEMORY HINEARI RORE TE WHAITI, ORAM WHAKAATAKU HEPI, RAIHA RAPATINI, RANGIHAUATA BLANEY AND WILMA KINGI AS TRUSTEES OF MANGAKINO POUAKANI MARAE Ngā kaitono pīra <i>Appellants</i>
ME <i>And</i>	MEMORY HAMON, WYVERN BRIGHTWELL, JOSEPHINE TAUTE AND LYNETTE WHATA Ngā kaiurupare pīra <i>Respondents</i>
Whakataunga: <i>Judgment date:</i>	11 June 2021

TE WHAKATAUNGA A TE KOOTI PĪRA MĀORI – TE UTU

Decision of the Māori Appellate Court on Costs

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Ngā Tuku Kōrero ā Te Kaitono Pira – Submissions of the Appellant

[1] On 14 May 2021, counsel for the appellants on behalf of the Trustees of the Mangakino Pouākani Marae filed a memorandum on costs seeking the following:

- (a) contribution from the respondents to the appellants' legal costs; or
- (b) a grant of Special Aid pursuant to s 98 of Te Ture Whenua Māori Act 1993 (the Act) to the Trust, post hearing in the event that an award of costs is not warranted.

[2] Counsel submit that the appellants were successful in their appeal and as the successful party, they are entitled to seek costs. Well settled, they argued, is the principle that costs must follow the event.

[3] Counsel submits that the award of costs is appropriate. The proceedings are akin to civil litigation where the parties were legally represented, requiring the filing of submissions and a half day hearing. Counsel claim that the respondents were wholly unsuccessful and declined the opportunity to resolve the matter prior to the hearing which would have avoided the appeal. The proceedings were hard fought, and the appellants were required to file further submissions after the hearing.

[4] Counsel note that the appeal is not a case involving familial relations such that the relationship between parties will be frustrated by an award of costs.

[5] While the respondents were in receipt of special aid, counsel for the appellants submit that the special aid is not a barrier to an award of costs as the Court has an unlimited discretion as to costs.

[6] As to quantum, counsel submit that the appellants incurred legal costs of \$28,080.47 and seek a reasonable contribution of 65 percent of the appellant's total costs and disbursements in the amount of \$18,439.14.

[7] In the event that the Court declines to grant costs against the respondent, appellants seek payment from the Māori Land Court Special Aid Fund for the costs incurred.

[8] Counsel argued that there is no bar seeking special aid at a later date and acknowledged the exceptional reasons to grant special aid after the proceedings have been concluded.

[9] In the present case, counsel submit that the proceedings were complex, involving procedural and substantive issues. The fundamental issue raised in the lower Court concerns the beneficiary class for the marae requiring the appellants to appeal despite the inquiry application being dismissed. The marae has limited financial means, and for the marae to bear the costs of a successful appeal is inconsistent with the kaupapa and Preamble laid down in ss 2 and 17 of the Act.

Nga Tuku Kōrero ā ngā Kaiurupare - Respondents submissions

[10] On 2 June 2021, counsel for the respondents filed his response. The respondents oppose the application for costs against the respondents but support appellants' application for special aid to meet their costs on the appeal.

[11] Counsel for respondents invited the Court to take the following factors into consideration when exercising its discretion in determining the award of costs:

- (a) The appellants and respondents are closely connected by reasons of whakapapa and shared status as beneficiaries of the marae. These connections, particularly in relation to the future working of the marae would be frustrated if an award of costs would be made;
- (b) The respondents' case on appeal was unsuccessful but not unmeritorious. The case advanced for the respondents was supported by case authority and did not add unreasonably to costs that the appellants would otherwise have incurred;
- (c) The appellants have not been wholly successful, as the matter was referred back for rehearing because of an error in the layout of the lower Court's decision rather than a substantive error in the lower Court's findings; and
- (d) The respondents' participated in good faith. They appeared in a representative capacity on behalf of the beneficiary whanau whose interests and status as

beneficiaries were potentially affected by the appeal and not in pursuit of purely personal interests.

Te Whakataunga – Decision

[12] We agree with the submissions of the respondent, particularly that the respondents' case on appeal while unsuccessful was not unmeritorious and that the appellants have not been wholly successful, as the matter was referred back for rehearing. Therefore, no costs will be awarded in this case.

[13] However, both parties have acknowledged that the case involved complex legal questions as to the extent of the Court's jurisdiction in respect of trusts under s 237 of the Act and that there was a need for legal representation in the preparation of the appellants' case.

[14] We also accept that the appellants were acting in a representative capacity as trustees and the Trust did not have the ability to bring the appeal from its own resources.

[15] Therefore, special aid is granted pursuant to s 98(3) of Te Ture Whenua Māori Act 1993 at the normal rate and subject to receipt of invoices.

[16] The Case Manager is directed to distribute a copy of this decision to all parties.

I whakapuaki i te 2.30 pm i Whanganui-a-Tara te 11th o ngā rā o Piripi te tau 2021.

C L Fox
DEPUTY CHIEF JUDGE

P J Savage
JUDGE

S F Reeves
JUDGE