

**IN THE MĀORI APPELLATE COURT OF NEW ZEALAND
TAITOKERAU DISTRICT**

**A20160001676
Appeal 2016/2**

UNDER Section 58, Te Ture Whenua Māori Act 1993

IN THE MATTER OF Appeal 2016/2 - Te Kao 86, 87, 91 and 108
Blocks - against orders made at 118 Taitokerau
MB 19-20 on 16 December 2015 - Notice of
Appeal (Respondent: Māori Land Court
Taitokerau)

BETWEEN DOLLY UJDUR
Appellant

Hearing: 10 May 2016
(Heard at Whangarei)

Coram: Judge S R Clark (Presiding), Judge S F Reeves, Judge M P
Armstrong

Appearances: Frank Wiki Snr, Frank Wiki Jnr, Georgina Johnson and Margaret
Emery

Judgment: 10 May 2016

ORAL JUDGMENT OF THE MĀORI APPELLATE COURT

Introduction

[1] On 16 December 2015 Judge Ambler granted orders¹:

- (a) Constituting the Harawira Ereatarā Ahu Whenua Trust in relation to Te Kao 86, 87, 91 and 108;
- (b) Directing the trustees to pay \$1,800 per annum from the income received from the Parengarenga Incorporation to Dolly Ujdur for two years in settlement of her claim in relation to a dwelling on Te Kao 86; and
- (c) Dismissing Dolly Ujdur's claim under s 18(1)(a) of Te Ture Whenua Māori Act 1993 ("the Act").

[2] Mrs Ujdur appeals against order 1(b), that the trustees pay to her \$1,800 per annum from the income received.

Background

[3] Te Kao 86, 87 and 108 are blocks of Māori freehold land located near Te Kao. Te Kao 91 is General land.

[4] The appellant is an owner in Te Kao 86, 87 and 108. The appellant's deceased mother is an owner in Te Kao 91. Those interests have not yet been transferred to her successors.

[5] Notices of intention to appear on the appeal were filed by Frank Edward Wiki (Junior), Frank Wiki (Senior), Georgina Johnson, Margaret France Emery and Maraea Trevethick. Most are owners in the Te Kao blocks and are close members of the appellant's family.

¹ 118 Taitokerau MB 19-20.

The proceeding before the lower Court

[6] Mrs Ujdur filed an application before the lower Court to determine ownership of a dwelling located on Te Kao 86. In support of the application Mrs Ujdur argued that she had been paying rates with respect to the block and that she had expended funds repairing and improving the dwelling.

[7] The application was initially heard by Judge Ambler on 3 August 2015 who adjourned the application to a settlement conference.²

[8] The settlement conference was held on 23 September 2015 and an agreement in principle was reached. Judge Ambler directed that the application be amended to include an application to constitute an ahu whenua trust, and that the Registrar was to arrange a staff member of the Court to attend a meeting of owners on 28 November 2015.³

[9] The meeting of owners was held as directed and Leon Tipene attended on behalf of the Court. In his report to Judge Ambler dated 7 December 2015, Mr Tipene recorded that the following agreement was reached:⁴

Dolly then conveyed to the Hui her decision because of Frank Jnr's disclosure. Dolly on her own accord conveys to the Hui the following outcome:

- Dolly (Tare) Ujdur conveyed to the hui that she agrees to have a Ahu Whenua Trust for the kids and wants Frank Jnr to be the main trustee;
- Dolly (Tare) Ujdur is going to forfeit the amount of \$28,000 owed to her (from the \$34,000 spent on improvements less the \$5,400 she has received from lease rentals), on the proviso;
- Dolly (Tare) Ujdur is to receive the next two (2) years lease rental from Parengarenga Incorporation at \$1,800 per annum.

Dolly's decision was well received by the whānau and they each expressed their gratitude to Dolly after Dolly had stated "this is over, finished!"

[10] A copy of that report was distributed to the parties.

² 109 Taitokerau MB 80-89.

³ 112 Taitokerau MB 295-296.

⁴ Report to Judge Ambler, 7.12.15, Record on Appeal 113.

[11] The application was then heard on 15 December 2015. Judge Ambler discussed with those present the outcome of the meeting of owners and adjourned the application to chambers to issue a decision.⁵

[12] On 16 December 2015 Judge Ambler granted orders as noted above.

[13] In February 2016 a notice of appeal was filed out of time by Mrs Ujdur. Leave to appeal out of time was subsequently granted on 20 April 2016.⁶

Issues

[14] Mrs Ujdur argues that her contribution to the maintenance of the homestead was not given full consideration. She contends that the difference between the amount she contributed, and the amount she received pursuant to the order from Judge Ambler, is unfair and that the order should be varied to include additional rent due from a lease over Te Kao 91.

[15] The issue in this case is whether Judge Ambler erred in granting an order that Mrs Ujdur be paid \$1,800 per annum in settlement of her claim in relation to the dwelling on Te Kao 86.

Discussion

[16] Mrs Ujdur argued that when agreement was reached on 28 November 2015, she understood that she was going to receive rent from both leases including the second lease over Te Kao 91. However, in response to questions from the Court, Mrs Ujdur accepted that she agreed to receive payment in the amount of \$1,800 per annum for the next two years. Mrs Ujdur also accepted that she later realised that this figure did not include the lease rental from Te Kao 91 and so she sought to vary the amount initially agreed upon so as to include that additional rent.

[17] Mrs Ujdur raised this for the first time at the hearing before Judge Ambler on 15 December 2015. Judge Ambler referred back to the agreement reached on 28 November

⁵ 124 Taitokerau MB 7-17.

⁶ [2016] Māori Appellate Court MB 207 – (2016 APPEAL 207).

2015 and commented that Mrs Ujdur would have to keep to that agreement.⁷ This is confirmed in Judge Ambler's subsequent decision of 16 December 2015, where he found that Mrs Ujdur must abide by the settlement agreed to at the meeting on 28 November 2015. Judge Ambler then granted an order to give effect to that agreement.

[18] We see no error in the approach adopted by Judge Ambler to grant an order to give effect to the agreement reached. The report filed by Mr Tipene clearly records the agreement between the parties and Mrs Ujdur confirmed the substance of that agreement during the hearing today. Mrs Ujdur's subsequent change of mind does not warrant a departure from that agreement, or from the orders made, and in our view does not justify the appeal which is now brought.

[19] The order granted by Judge Ambler not only gave effect to the agreement reached but is consistent with the objectives set out in s 17 of the Act including: ascertaining and giving effect to the wishes of the owners; facilitating the settlement of disputes; and promoting practical solutions.

[20] We do not accept Mrs Ujdur's argument that the agreement reached, and subsequent order granted, was unfair.

[21] Mrs Ujdur complained that she was pressured into the agreement at the whānau meeting on 28 November 2015. There is no objective evidence which supports her assertion. Mr Tipene's report notes that those in attendance managed themselves well throughout the discussions concerning the settlement of Mrs Ujdur's claim. The report further notes that after Frank Wiki (Junior) addressed those present, Mrs Ujdur offered to settle on the terms as recorded in the report. That offer was accepted by those present after which Mrs Ujdur stated "This is over, finished!".⁸ As such the record indicates that Mrs Ujdur proposed the settlement on these terms and that she understood that this was in full and final settlement of her claim.

[22] Mrs Ujdur further argues that at the hearing on 15 December 2015, Judge Ambler failed to take into account her request to include the rent from the lease over Te Kao 91 in

⁷ 124 Taitokerau MB 14.

⁸ Report to Judge Ambler 7.12.16 RoA 113.

settlement of her claim and that she felt intimidated and under pressure during the hearing. We do not accept this argument. The minutes of the hearing clearly record that Mrs Ujdur raised this issue with Judge Ambler. Judge Ambler responded that:⁹

Yes. What I was going to say, though, is that if you are wanting to put to the trust that you should receive the income from 91, then that is another discussion that you have to have with the trustees and the owners because the record of the meeting of the 28th of November is quite clear that the settlement was for you to receive \$1,800 per annum for two years.

[23] Judge Ambler then issued his subsequent decision granting orders pursuant to the terms of that settlement.

[24] The minutes record that Judge Ambler did take this issue into account but granted orders pursuant to the settlement that was reached. The minutes also record that Judge Ambler suggested to Mrs Ujdur that if she wished to pursue this further then she should enter into discussions with the trustees in relation to the claim for the additional lease rental.

[25] Finally, we do not accept Mrs Ujdur's argument that the substance of the agreement reached was unfair. Mrs Ujdur argued that she had spent \$34,000 on improvements to the homestead. She contends that she forfeited the amount of \$28,600 owed to her being the amount spent on the improvements less \$5,400 she had received from lease rentals. Mrs Ujdur's calculations are not correct. Mrs Ujdur actually received \$8,550 in lease rental from Te Kao 87 and Te Kao 91 between 20 August 2011 and 20 August 2015. This is significantly higher than the amount she disclosed to the other owners at the meeting on 28 November 2015. This means that, including the compensation in the order granted by Judge Ambler, Mrs Ujdur will receive a total of \$12,100.

[26] We also note that the improvements to the house were made possible by a Housing New Zealand agreement. Pursuant to the terms of that arrangement, the costs of the improvements were treated as a loan payable by Mrs Ujdur. However, that loan was forgiven pursuant to the terms of the agreement and Mrs Ujdur confirmed that in fact she did not make any personal contributions towards the cost of those improvements.

⁹ 124 Taitokerau MB 15.

[27] Mrs Ujdur also referred to additional contributions that she says were made including the installation of a new hot water system, survey work on Te Kao 87, and the purchase of a chainsaw. However, Mrs Ujdur clarified during the course of the hearing today that those costs were paid from the lease rental that she received. In this light we consider that the settlement reached, and the order granted by Judge Ambler, is a generous one to the appellant.

[28] We reject any argument that the substance of such a settlement is in any way unfair to Mrs Ujdur.

Application to waive the filing fee

[29] Mrs Ujdur has applied for a refund of the filing fee paid with respect to the appeal pursuant to the Māori Land Court Fees Regulations 2013.

[30] We decline to grant a refund of the filing fee in this case. The terms of the agreement reached, and the order granted, are generous to the appellant. Mrs Ujdur failed to comply with timetabling directions set down by this Court. Mrs Ujdur also failed to attend the appeal in person and only attended by telephone through arrangements made by the Court. Finally, the appeal itself lacked merit and we consider that a refund of the filing fee is not justified.

Decision

[31] The appeal is dismissed pursuant to s 56(1)(g) of Te Ture Whenua Maori Act 1993.

Pronounced at Whangarei at 2.15pm this 10th day of May 2016.

S R Clark(Presiding)
JUDGE

S F Reeves
JUDGE

M P Armstrong
JUDGE