

**I TE KOOTI WHENUA MĀORI O AOTEAROA**

**I TE ROHE O TE TAITOKERAU**

*In the Māori Land Court of New Zealand*

*Taitokerau District*

**A20180009391**

**A20180009392**

WĀHANGA

*Under*

Regulation 21, Māori Reservation Regulations  
1994 and Section 240, Te Ture Whenua Māori Act  
1993

MŌ TE TAKE

*In the matter of*

Manawakore C1 and D

I WAENGA IA

*Between*

MARAEA WYNYARD, RAWINIA HARRISON,  
JACK TIPENE, ERICA SHAW, ISABEL JULL  
AND DIANA ELLIS

Ngā kaitono

*Applicants*

ME

*And*

CHARLIE WAATA, IAN MACDONALD,  
ERANA CARTER AND TE AROHA LAW

Ngā kaiurupare

*Respondents*

Nohoanga:

On the papers

*Hearing*

Whakataunga:

22 March 2022

*Judgment date*

---

**TE WHAKATAUNGA Ā KAIWHAKAWĀ JUDGE T M WARA**

*Judgment of Judge T M Wara*

---

**He kōrero tīmatanga***Introduction*

[1] Pa Te Aroha Marae is a Māori reservation located in Whirinaki, within the Hokianga. The marae has a strong connection to the Catholic Church and was established by the descendants of Te Hikutu who were baptised by Catholic Bishop Pompallier in the Whirinaki River. While the name of the marae refers to affection, charity and compassion, the internal conflicts and on-going litigation regarding this marae conflicts with these values.

[2] This decision follows a determination issued in 2019 concerning the trustees of the Manawakore C1 and Manawakore D Māori Reservation (Pa Te Aroha Marae).<sup>1</sup> An application had been filed by Maraea Wynyard; Rawinia Harrison; Jack Tipene; Erica Shaw; Isabel Jull and Diana Ellis seeking an inquiry into a Māori reservation, and the removal of trustees. Four of the applicants, namely Ms Harrison; Mr Tipene; Ms Shaw and Ms Jull, are current trustees of the Pa Te Aroha Marae, and they were seeking the removal of Charlie Waata; Ian MacDonald; Erana Carter and Te Aroha Law.

[3] Ultimately the application for removal of trustees failed, however I determined that an inquiry into the reservation was necessary concerning the ongoing absences of some of the applicant trustees. The uncontested evidence before the Court in 2019 was that some of the applicant trustees had failed to attend a significant number of trustee meetings. While I was minded to remove those trustees who failed to regularly attend meetings, I determined that further inquiry into the ongoing absences from trustee meetings was necessary, and directed the parties to file further evidence.

[4] The issue for determination is whether Ms Jull; Ms Harris; Ms Harrison; Ms Robinson and Ms Shaw should be removed as trustees of Pa Te Aroha Marae for breach of their duty to be active.

---

<sup>1</sup> *Wynyard v Waata - Manawakore C1 and Manawakore D (Pa Te Aroha Marae)* (2019) 205 Taitokerau MB 207 (205 TTK 207).

**Kōrero whānui***Background*

[5] The background of Pa Te Aroha Marae is set out in my previous decision.<sup>2</sup> The marae has been embroiled in conflict for some time, and the conflict has been the subject of litigation since 2016. One of the issues addressed in my previous decision was in relation to trustee meetings continuing without a quorum. Evidence was submitted with regards to trustee attendance at the meetings and I observed the following:

[51] The respondent trustees have submitted a table attached to the evidence of Mr Waata outlining trustee attendance at meetings held between 2 December 2016 and 29 September 2018, and this evidence has not been disputed by the applicants. There were 13 meetings held during the relevant period, and the table shows that Isabel Jull; Sophie Harris and Rawinia Harrison failed to attend seven meetings; Alia Robinson and Erica Shaw failed to attend six meetings and Bridget Wallace and Jack Tipene failed to attend five meetings. In comparison, Te Aroha Law and Ian MacDonald have been absent from one meeting and Erana Carter and Charlie Waata have attended all meetings during that period.

[52] While apologies may have been given for most of the absences, it is difficult to see how the Trust can properly function when trustees simply do not make themselves available for meetings. In addition, I cannot overlook the fact that the applicants are complaining about issues arising from a lack of quorum that they are directly responsible for.

[6] Given the ongoing absences, and the lack of response from those trustees, the parties were directed to file further evidence addressing those absences and a further hearing was fixtured.

[7] On 21 January 2020 the applicants filed submissions in response, addressing attendances at a series of meetings between 2 December 2016 and 29 August 2018, however no specific statements of evidence were filed. Due to delays following the Covid-19 restrictions and scheduling issues, the matter was not set down for hearing until 16 October 2020.

[8] On 15 October 2020 a request was received from Diana Ellis for an adjournment of the hearing, as neither herself, Ms Shaw, Ms Wynyard or Ms Jull were able to attend the hearing. Both parties agreed for the fixture to be vacated, with the matter to be determined on the papers filed with the Court.

---

<sup>2</sup> Above n 1.

**Ngā kōrero a ngā Kaiurupare**

*Position of the respondent trustees: Charlie Waata; Ian MacDonald; Erana Carter and Te Aroha Law*

[9] The respondent trustees seek the removal of Ms Jull, Ms Harrison and Ms Shaw on the basis that they have failed to fulfil the duties of a responsible trustee. They have also submitted that Maraea Wynyard and Mr Tipene should be removed, and that Diana Ellis (who is a beneficiary) should be sanctioned, due to their continued negative influence which is detrimental to the marae.

[10] With regard to evidence, the respondent trustees rely on the minutes of the trustee meetings held between 12 December 2016 and 29 September 2018 which record trustee attendances over 13 meetings. The respondent trustees have given evidence pertaining to the attendance of Ms Jull, Ms Harrison; Ms Shaw and Mr Tipene:

- (a) 02/12/2016: Apologies from four trustees. Isabel Jull and Rawinia Harrison left the meeting early resulting in the meeting becoming inquorate.
- (b) 11/02/2017: Rawinia Harrison arrived late at 12:05pm when the meeting started at 11:00am. An apology was given for Isabel Jull, however this was not accepted as apologies had closed.
- (c) 08/04/2017: Apology from Jack Tipene, and Sophie Harris left the meeting early at 12:29pm.
- (d) 20/05/2017: Apologies from Rawinia Harrison; Alia Robinson; Jack Tipene; Sophie Harris and John Bristow Senior.
- (e) 17/06/2017: Apologies from Rawinia Harrison and Alia Robinson.
- (f) 12/08/2017: Apologies from Rawinia Harrison; Alia Robinson and Jack Tipene
- (g) 14/10/2017: Apologies from Sophie Harris; Rawinia Harrison and Isabel Jull.

- (h) 09/12/2017: Apologies from Rawinia Harrison; however majority of trustees voted against the acceptance of apologies and the motion was lost.
- (i) 14/01/2018: Apologies from Jack Tipene and one other trustee. Maraea Wynyard; Rawinia Harrison and Isabel Jull arrived late at 12:05pm.
- (j) 17/02/2018: Apologies from Isabel Jull; Erica Shaw and Jack Tipene.
- (k) 21/04/2018: Apologies from Sophie Harris and Rawinia Harrison.
- (l) 28/07/2018: Apologies from Alia Robinson.
- (m) 29/09/2018: Apologies from Isabel Jull. Rawinia Harrison arrived late.

**Ngā kōrero a ngā Kaitono**

*Position of the applicants: Isabel Jull; Sophie Harris; Rawinia Harrison; Alia Robinson and Erica Shaw*

[11] The applicants submitted that they should not be removed as trustees. With regard to the 13 meetings between 02 December 2016 and 29 September 2018, they offer specific explanations for four of those meetings, and say that no minutes were provided for the meeting of 11 February 2017 so the assertions regarding that meeting should not be accepted.

[12] With regard to the meeting held on 02 December 2016, while it is accepted that Ms Jull and Ms Harrison left the meeting early, the explanation is that their companion Cissy Rerekura was getting upset at the meeting and wanted to go home. As the three has travelled together, they needed to leave together and they say that they should not be sanctioned for this reason.

[13] As to the meeting held on 12 August 2017, the applicants say that this was a wānanga as opposed to a trustee meeting, and therefore it is not relevant for the present inquiry.

[14] Turning to the meeting of 14 January 2018, Ms Jull and Ms Harrison are recorded as not being present, however the minutes record their arrival to the meeting at 12:05pm. They say that the minutes inaccurately reflect an absenteeism when in fact they were present. They also raise an issue of notice, and say that Ms Jull and Ms Harrison were not advised that the start time of the meeting had changed.

[15] Finally, with regard to the meeting on 21 April 2018, the applicants say that Rawinia Harrison was not given notice of this meeting, and that the lack of notice should be taken into account.

**Te Ture**  
*The Law*

[16] I have jurisdiction to remove a trustee for cause pursuant to s 240 of Te Ture Whenua Māori Act 1993. This provision was amended by Te Ture Whenua Māori Amendment Act 2020, which came into force on 6 February 2021.

[17] Before the amendment, I had to consider whether the trustee had failed to carry out their duties satisfactorily, which was a two-step process.<sup>3</sup> The first step involved an assessment as to whether the trustee had carried out his or her duties satisfactorily in an objective sense, the second step required an assessment as to whether to exercise my discretion to remove the trustee, in accordance with the principles and kaupapa of the Act.

[18] Following amendments to Te Ture Whenua Māori Act 1993, s 240(1) now provides that:

**240 Removal of trustee**

- (1) 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 [that]—
- (a) the trustee has lost the capacity to perform the functions of a trustee; or
  - (b) the removal is desirable for the proper execution of the trust, and 1 or more of the following grounds for removal are met:

---

<sup>3</sup> *Taurua v Harawira – Te Tii Waitangi A* [2017] Māori Appellate Court MB 328 (2017 APPEAL 328) at [13].

- (i) the trustee repeatedly refuses or fails to act as trustee:
- (ii) the trustee becomes an undischarged bankrupt:
- (iii) the trustee is a corporate trustee that is subject to an insolvency event:
- (iv) the trustee is no longer suitable to hold office as trustee because of the trustee's conduct or circumstances.

[...]

[19] The amended s 240 now specifies when it is desirable to remove a trustee for the proper execution of the trust, and the test for removal requires a new approach. First, I must assess whether one of the prescriptive grounds set out in s 240(1)(b) have been met. Second, I must determine whether removal is desirable for the proper execution of the trust, which involves an exercise of discretion. In exercising my discretion, I must have regard to the principles and kaupapa of the Act.

[20] The present case requires an assessment of the first ground set out in s 240(1)(b)(i), and the last ground set out in s 240(1)(b)(iv). The first ground requires an assessment of the trustee's conduct, and whether he or she refuses to act, or has failed to act as a trustee. There is no distinction between conduct that is active or passive. The last ground is where the trustee is no longer suitable to hold office because of his or her conduct or circumstances. This ground is very broad in scope, and as observed by Judge Armstrong in *Rihari v Auckland*, “[s]uch a wide-ranging ambit is necessary to allow the Court to consider the range of conduct or circumstances that may result in a trustee being unsuitable to hold office.”<sup>4</sup>

[21] Before the amendment, a number of principles for the removal of trustees were developed in the superior courts. I endorse the views of Judge Armstrong that the following principles continue to apply:<sup>5</sup>

- (a) Removal is a serious step and is not undertaken lightly;
- (b) The trustees at risk of removal must be properly notified in advance;

<sup>4</sup> *Rihari v Auckland - Takou* (2021) 240 Taitokerau MB 42 (240 TTK 42) at [29].

<sup>5</sup> At [31].

- (c) Technical breaches of trust and governance instruments may not lead to removal unless the trust assets have been put at risk or there has been a serious loss or malfeasance;
- (d) Generally, the Court must be satisfied that there is evidence of real abuse, failure or malfeasance and the absence of any tenable defence.

[22] In the Māori Reservations Regulations 1994 (“the Regulations”) are also relevant. Regulation 3 makes it clear that when a trustee is removed from office by order of the Court, they will not be eligible for reappointment. Accordingly, this further emphasises the point that the decision to remove a trustee is a serious step and should not be made lightly.<sup>6</sup>

[23] 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.<sup>7</sup> He considered regulation 17(b) and found that trustees must attend trustee meetings in order to administer trust business and to carry out their duties as trustees:

It is implicit within this regulation, and in accordance with the general practice of trusts constituted by the Māori Land Court, that trustees must attend trustee meetings in order to administer trust business and to carry out their duties as trustees. As such, 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.

## **Kōrerorero**

### *Discussion*

*What was the extent of meeting attendance for the trustees?*

[24] The scope of this inquiry are the thirteen meetings that were held between of 2 December 2016 and 29 September 2018. It is important to note that the trustees can only be held accountable for their actions during their term of office, which commences when they are appointed by the Court, as opposed to when they are elected. Ms Jull and Ms Harris were appointed by the Court on 04 July 2013 and are accountable for all of the meetings; however, Ms Harrison; Ms Robinson; Ms Shaw and Mr Tipene were only

<sup>6</sup> *Perenara v Pryor – Matata 930* (2004) 10 Waiariki Appellate MB 233 (10 AP 233) at 241.

<sup>7</sup> (2015) 99 Taitokerau MB 174 (99 TTK 174) at [35].

appointed on 17 July 2017 and are only accountable for eight meetings during the relevant period.

[25] The meetings in this period include both meetings of the trustees as well as annual general meetings. The inquiry includes both trustee meetings and general meetings because the Marae Charter requires that all trustees attend unless an apology is received, per cl 3.1.

[26] As to the applicants' responses, challenges or explanations, these were limited to five of the thirteen meetings and on that basis I must conclude that the evidence for the remaining nine meetings is accepted.

[27] The applicants say that the meeting of 11 February 2017 cannot be included as the respondent trustees' have failed to file the minutes of this meeting. Having reviewed all the evidence before this Court, a complete set of minutes for the meeting of 11 February 2017 has not been filed and therefore this meeting is excluded from consideration.

[28] With regard to the response to the meeting held on 12 August 2017, while the applicants claim that the meeting was a wānanga, the minutes record that the meeting was an annual general meeting where reports were presented, and an election was held. Therefore, I find that this meeting is relevant for the purposes of the inquiry.

[29] I now turn to the specific attendances of the trustees.

Ms Jull

[30] Ms Jull was present during eight of the twelve meetings which amounts to an attendance rate of approximately 67% for the period. Her apologies are recorded in the minutes of the following meetings: 14 October 2017; 09 December 2017; 17 February 2018 and 29 September 2018. In addition, she left the meeting of 02 December 2016 early, and arrived at the meeting of 14 January 2018 late. With regard to the meeting of 02 December 2016 it started at 8:30pm and Ms Jull is recorded as leaving just before it closed at 9:05pm. Her departure resulted in the meeting becoming inquorate, and it was closed soon afterwards. While it is said that she left the meeting because her companion became upset and wanted to go home, as a responsible trustee she is required to remain at a

meeting until the business is complete. The minutes reflect that Ms Jull decided to leave the meeting before the vote could take place, and knew that her departure would render the meeting inquorate. When asked if she could wait until the vote was over, she replied, “No. I don’t want to.” This behaviour is not acceptable.

[31] With regard to the meeting of 14 January 2018, I find that the time for the meeting changed from that advertised, as the minutes record that a wananga held before the meeting finished early, and that other trustees had to be contacted to start the meeting. Therefore, I accept that Ms Jull was late due to a change of the meeting time.

[32] Ultimately, I find that Ms Jull’s attendance rate for the period is 67% and that she left one meeting early without reasonable excuse which resulted in the meeting becoming inquorate. For these reasons I find that Ms Jull has repeatedly failed or refused to act as a trustee.

#### Sophie Harris

[33] Ms Harris was present during five of the twelve meetings which amounts to a 42% attendance rate for the period. Her apologies are recorded in the minutes of the following meetings: 02 December 2016; 20 May 2017; 14 October 2017; 09 December 2017; 21 April 2018 and 28 July 2018. In addition, she left the meeting of 8 April 2017 early. No response has been filed by Ms Harris, and her resignation was tabled and accepted at the 2018 Annual General Meeting. The Court records confirm that she has not yet been replaced as a trustee.

[34] Ultimately, I find that Ms Harris’ attendance rate for the period is 42% and she left one meeting early without reasonable excuse. I find that Ms Harris has repeatedly failed or refused to act as a trustee. However, as Ms Harris tabled her resignation and it was accepted at the 2018 Annual General Meeting, she will be removed on that basis. For the avoidance of doubt, had Ms Harris not resigned then she would have been removed.

#### Rawinia Harrison

[35] Ms Harrison was present for four of the eight meetings which amounts to a 50% attendance rate for the period. Her apologies are recorded in the minutes of the following meetings: 12 August 2017; 14 October 2017; 09 December 2017; and 29 September 2017. The minutes record that Ms Harrison gave her apologies for these meetings on the basis that her baby was ill and she was therefore unable to attend. Immediately following Ms Harrison's appointment on 17 July 2017, she was absent for three consecutive meetings, including an Annual General Meeting held on 12 August 2017. This is problematic given that the Marae Charter provides that a trustee can be replaced when they have been absent for three consecutive meetings without reason, per cl 5.0. Rawinia was also recorded as late to the meeting of 14 January 2018 arriving at 12:05pm, however I accept that this was due to a change of meeting time as she arrived with Ms Jull. At the same meeting, however, she is recorded as leaving at 1:07pm to catch a flight which I find problematic, as she did not afford herself sufficient time to be present at the meeting in any event. In addition, she also arrived late to the meeting of 29 September 2018, however it appears from the minutes that she arrived soon after the meeting commenced.

[36] Ultimately, I find that Ms Harrison's attendance rate for the period is 50% and she left one meeting early without reasonable excuse. For these reasons I find that Ms Harrison' has repeatedly failed or refused to act as a trustee.

Alia Robinson

[37] Ms Robinson was present for five of the eight meetings which amounts to a 62.5% attendance rate for the period. No response has been filed by Ms Robinson, and her resignation was also tabled and accepted at the 2018 Annual General Meeting. She will be removed on that basis.

Jack Tipene

[38] Mr Tipene was present for five of the eight meetings which amounts to a 62.5% attendance rate for the period. His apologies are recorded in the minutes of the following meetings: 12 August 2017; 14 January 2018 and 17 February 2018. Ultimately, I find that his attendance rate for the period is 62.5%.

Erica Shaw

[39] Ms Shaw was present for seven of the eight meetings which amounts to an 87.5% attendance rate for the period. She gave her apologies for the meetings of 17 February 2018. Given her high rate of attendance there is no need for further inquiry.

*Is the removal of trustees desirable for the proper execution of the trust?*

[40] The role of a trustee is an extremely important role that carries with it a series of duties and obligations. It is not a role that should be undertaken light-heartedly. A person who is selected to be a marae trustee shoulders the obligation of kaitiakitanga and is responsible for maintaining the mana of the marae. The Court will only appoint a person to be a marae trustee where it is satisfied that that person is supported, and has sufficient knowledge, skill and experience to be a trustee.

[41] All trustees are expected to actively carry out their duties. The duty to be active has been considered in *Equity and Trusts in New Zealand*:<sup>8</sup>

Trustees must be active rather than passive. They must all perform the duties attendant on the performance of the trust rather than relying on their co-trustees. Accordingly, all trustees must actively participate in trust-related decision-making; signing documents presented to him or her by other trustees (or trust solicitor) without active thought on the matter is a breach of a trustee's duty. The law does not recognise any distinction between active and passive breaches of trust.

[42] For all of the cited absences in the relevant period, apologies were given by the trustees and for the most part, those apologies were accepted at the meeting. To give an apology is to seek a leave of absence from a meeting, and where an apology has been formally accepted and recorded in the minutes, then the implication is that a positive grant of leave has been given by the trustees. The reasons that a trustee cannot attend a meeting might be compelling, but the question is whether an apology abrogates the duty to be active.

---

<sup>8</sup> A Butler (ed) *Equity and Trusts in New Zealand* (2<sup>nd</sup> ed, Brookers, Wellington, 2009) at chapter 5.3(9).

[43] I am of the view that the duty to be active in the role of trustee remains, irrespective of whether the trustee has a reasonable excuse or has received a leave of absence from a meeting. It is implicit that when a person consents to being appointed a trustee, that he or she also consents to actively participating in trust business and attending trust meetings. If this commitment cannot be maintained to a high standard, even if there are seemingly good reasons for the ongoing absence, then that trustee should tender their resignation. Therefore, I am of the view that an apology does not abrogate the duty to be active.

[44] I consider that a breach of this nature is not a technical breach where removal will only occur where the trust assets have been put at risk or there has been a serious loss. Rather it is a serious breach where some trustees have failed in their fundamental duty to be active trustees. There are previous decisions of this Court have considered removal of a trustee where he or she has failed to attend trustee meetings, however these determinations were made prior to the 2021 amendments when the test for removal was a failure to perform trustee duties satisfactorily. I consider that the new test for removal, which is focussed on whether it is desirable to remove a trustee, lowers the threshold of removal in favour of removal.

[45] This does not excuse the other trustees, and I remind all trustees that they risk removal if they fail to attend trust meetings. The first trustee whose conduct stands out is Ms Jull . While her attendance rate was slightly higher than others, the fact that she knowingly walked out of a meeting before the business was concluded, with the knowledge that her walk-out would render the meeting inquorate, is unacceptable. The next trustee is Rawinia Harrison. Her attendance rate was only 50% and she failed to attend three meetings in a row. Also, for one of the meetings she only afforded herself one hour to attend, which was insufficient given that the meetings tend to run for hours. With regard to reasons for non-attendance, in the minutes Ms Harrison signalled that her baby was sick, she has six children, and two businesses to run. In my view, she should have reflected on her ability to carry out the role as trustee if she did not have sufficient time. With regard to Ms Harris, her attendance rate at 42% was very low, and this is unacceptable.

[46] On this basis I find that Ms Jull, Ms Harrison and Ms Harris have all breached their duty to be active and I am satisfied that they have repeatedly refused or failed to act as

trustee per s 240(1)(b)(i). However, as Sophie Harris resigned as a trustee she is excluded from being removed for cause.

[47] Having found that one of the prescriptive grounds set out in s 240(1)(b) has been met, I must determine whether removal is desirable for the proper execution of the trust. In considering the issue of desirability, it is helpful to consider the undesirable implications for a trust when a trustee or multiple trustees do not attend meetings. These may include:

- (a) Either scheduled meetings cannot proceed due to lack of quorum, or they proceed on the basis that they are not valid.
- (b) In the absence of a majority of trustees, valid resolutions cannot be passed.
- (c) Active trustees become tired of carrying the responsibility of governance and resign from office.
- (d) Potential trustees are discouraged from accepting nominations to be a trustee where the trust is dysfunctional.

[48] Ultimately it is desirable to have active trustees who are fully engaged in trust business, and Ms Jull and Ms Harrison failed to meet that standard. Therefore, I am of the view that it is desirable to remove both Ms Jull and Ms Harrison in accordance with s 240(1)(b)(i) of the Act.

### **Kupu Whakatau**

#### *Decision*

[49] I grant the following orders:

- (a) Pursuant to s 240 of Te Ture Whenua Māori Act 1993, I grant an order removing Isabel Jull and Rawinia Harrison as trustees of Pa Te Aroha Marae.
- (b) Pursuant to s 239 of the Act, Sophie Harris and Alia Robinson are removed as trustees upon their resignation.

- (c) Pursuant to s 338(7) of the Act, vesting the Marae and its assets in the remaining trustees.

[50] There is still an outstanding application before this Court for the appointment of replacement trustees (A20190001678). I direct that this application be set down for a special hearing before me within four weeks from the date of this decision.

I whakapuaki i te 11:00 am i Waiariki, rua tekau mā rua o ngā rā o Poutū-te-rangi i te tau 2022.

*Pronounced at 11:00am in Waiariki on this 22<sup>nd</sup> day of March 2022.*

T M Wara  
**JUDGE**