

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

A20150003889

A20150004569

UNDER Sections 37, 237 and 239 of Te Ture Whenua
Māori Act 1993

IN THE MATTER OF Te Koau A Block

BETWEEN SHERYLE ALLEN, JORDAN HAINES–
WINIATA, JAMES MATENGA, PETER
STEEDMAN, DAVID STEEDMAN,
RHONDA TOA TOA and RUKA WAAPU as
trustees of Te Koau A Trust
Applicants

AND WERO KARENA
Respondent

Hearing: 2 August 2016

Appearances: A Sykes, for the Trustees
G Calver for W Karena, represented by G Calver

Judgment: 2 August 2016

JUDGMENT OF JUDGE L R HARVEY

Solicitors:

G Calver, Barrister, Market Street Chambers, P O Box 1087, Hastings 4156, billcalver@xtra.co.nz

A Sykes, Kathy Ertel & Co Solicitors, 26 Bidwill Street, Mount Cook, Wellington 6021, asykes@klelaw.com

Introduction

[1] There are proceedings extant concerning Te Koau A Trust and a lease, it is said, existed between the trust and Wero Karena.¹ Mr Karena seeks a review of trust and for the removal of trustees. Those proceedings were before the Court earlier today and were eventually adjourned to chambers to await the submissions of Mr Calver on behalf of Mr Karena regarding Ms Sykes application for, in effect, a strike out.

[2] During the course of the hearing Ms Sykes raised the issue of a separate application for the appointment of Lewis Winiata as a replacement of trustee following a recent general meeting of owners. That application had not been accepted by the registrar pending directions from the Court.

[3] Mr Karena objected to that application citing concerns over the lack of notice for the hui of owners where Mr Winiata was nominated, as well as concerns over the suitability of the applicant for appointment in the context of whether or not he was broadly acceptable to the beneficiaries.

Issue

[4] The issue for determination therefore is whether or not the appointment of a replacement trustee should proceed and whether Mr Winiata should be appointed.

[5] To avoid doubt, I confirm that the registry accepted the application for filing at my direction, in accordance with the Court's jurisdiction and that consequently it was not notified in the Court's pānui.²

Applicant's submissions

[6] Ms Sykes submitted that as a vacancy had arisen due to the resignation or otherwise of James Matenga it was right and proper that the beneficial owners should consider a replacement. That occurred with the election of Mr Winiata at a recent general meeting of owners. Mr Winiata was therefore broadly acceptable to the beneficiaries given that a quorum existed at the meeting and there had been notification in local newspapers.

[7] On the issue of notice, Ms Sykes further submitted that in accordance with the trust's usual practice, notices were published in a local newspaper confirming that an election was

¹ Applications A20150003889 and A20150004569

² Māori Land Court Rules 2011, rr 4.13(3)(b), 4.14(1)(d), 6.6

to occur. Therefore, counsel contended, the notice requirements had been satisfied. As to the suitability of Mr Winiata, in the context of support from the owners, it was noted that Mr Winiata's nomination was not opposed at the meeting.

[8] For these reasons therefore, Ms Sykes submitted that it was appropriate that the Court should now appoint, by way of replacement, Mr Winiata as a responsible trustee, notwithstanding that the application had not been notified in the Court's pānui in the usual way.

Wero Karena's submissions

[9] Mr Karena, in his principal proceedings, asserts that the trustees have been failing in their duties and ought to be removed. He also argues that a general meeting of owners should be convened by the Registrar for the purpose of electing replacement trustees.³

[10] Regarding this application for the appointment of a replacement trustee, Mr Karena says that he did not receive notice of the meeting. He also questions whether or not Mr Winiata is in fact broadly acceptable to the beneficiaries of the trust.

The Law

[11] Section 222 (2) of Te Ture Whenua Māori Act 1993 is relevant here:

222 Appointment of trustees

...

- (2) The court, in deciding whether to appoint any individual or body to be a trustee of a trust constituted under this Part,—
- (a) shall have regard to the ability, experience, and knowledge of the individual or body; and
 - (b) shall not appoint an individual or body unless it is satisfied that the appointment of that individual or body would be broadly acceptable to the beneficiaries.

[12] A leading authority in the context of the appointment of trustees is the Court of Appeal judgment *Clarke v Karaitiana*.⁴ In that decision, the importance of the broad acceptability of nominees as well as their relevant skills and experience, were highlighted:⁵

[51] The touchstone is s 222(2) itself. In appointing a trustee, the Court is obliged to have regard to the ability, experience and knowledge of the individual concerned. In considering those issues, the Court will no doubt have regard to such

³ See amended application of Mr Karena dated 1 June 2016

⁴ *Clarke v Karaitiana* [2011] NZCA 154

⁵ Ibid

matters as the nature and scale of the assets of the trust concerned and the issues the trust is facing. The importance of the views of the beneficial owners of the trust is underlined by s 222(2)(b) which forbids the Court from appointing a trustee unless the Court is satisfied that the appointment of that person will be broadly acceptable to the beneficiaries.

[52] It may be putting the matter too highly to say that the Court should only depart from the views of the owners in rare circumstances. The Court is not bound to appoint the leading candidates resulting from an election by the beneficial owners. A candidate who has strong support from the owners might be regarded by the Court as unsuitable through lack of ability, experience and knowledge or for other reasons. For example, the existence of conflicts of interest might be relevant or the need to obtain a suitable spread of skills amongst the trustees. Nevertheless, the Court would ordinarily give substantial weight to the views of the owners as demonstrated by the outcome of the election. If the Court is minded not to appoint the leading candidates as elected by the owners, it must still be satisfied the requirements of s 222(b) are met. For that purpose, the Court would need to have appropriate evidence before it. The outcome of an election at a meeting of owners is a useful means of obtaining such evidence.

[13] I adopt the reasoning set out in that judgment.

Discussion

[14] Mr Karena confirmed that he does not object to Mr Winiata personally but rather underscored that his opposition is to the process and in particular the lack of notice. From that submission I assume that Mr Karena does not therefore object to the first limb of the test set out in s 222 of the Act, whether or not Mr Winiata possess the relevant ability, experience and knowledge to fulfil the duties of responsible trustee. Having examined the evidence on the Court file, I am satisfied that Mr Winiata meets the criteria set out in s 222(a) of the Act.

[15] On the issue of broad acceptability to the beneficiaries, the evidence is that a general meeting of owners was convened with notice in a public newspaper. A quorum for the meeting existed and therefore any decisions made, in the absence of meritorious objections, must be deemed to be valid. I note from the trust order that the quorum is set at five owners.⁶ Ms Sykes contended that there were at least 11 beneficial owners present throughout the meeting. Mr Karena raised questions as to whether or not at least two of the attendees were in fact owners. Even so, he appeared to acknowledge that a quorum was present. The case manager has now examined the list of attendees as against the list of owners and confirms that a quorum was present.

[16] As foreshadowed, Mr Karena's principal concern surrounds notice. The short point is that there is no invariable rule as to what constitutes proper notice in this context. The trust order is silent on the point and so no assistance can be derived from the terms of trust.

⁶ 197 Napier MB 49-52 (197 NA 49-52) at cl 7(a)(iii)

The evidence on the file discloses that there was 28 days notice for the general meeting and I understand from the case manager that this period of notification is above the usual practice of the trust. I therefore consider that this period of notice was sufficient and acknowledge that it has been the practice of this trust to notify its general meetings in the manner that occurred. In any case however, it may be appropriate that the trustees and the owners turn their minds in the future to set out precisely in the trust order the manner in which notice should be given.

[17] In the meantime however, I am satisfied that there was notice of the general meeting and of an election of trustees. I am also satisfied that Mr Winiata satisfies the criteria set out in s 222 of the Act. Accordingly, I see no reason why his application for appointment should be declined or adjourned.

[18] If Mr Karena remains concerned at the outcome of this decision there are the remedies of rehearing and appeal.

Decision

[19] Lewis Winiata is appointed a replacement trustee for James Matenga per s 239 of Te Ture Whenua Māori Act 1993.

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

These orders are issued immediately per rule 7.5 of the Māori Land Court Rules 2011

Pronounced at 5.05 pm in Hastings on Tuesday this 2nd day of August 2016

L R Harvey
JUDGE