

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

A20190003563

UNDER Section 19, Te Ture Whenua Māori Act 1993

IN THE MATTER OF Pukepoto No 8 B No 12 and Other Blocks

BETWEEN DANIELLE BROWN AS TRUSTEE OF TE
KUIHI WHĀNAU TRUST
Applicant

AND KENT ROBSON
Respondent

Hearing: 30 April 2019
(Heard at Whangārei)

Judgment: 27 June 2019

JUDGMENT OF JUDGE T M WARA

Introduction

[1] The applicant is Danielle Brown who is a co-chairperson of the Te Kuihi Whānau Trust (“Whānau Trust”). She seeks a permanent injunction on behalf of the Whānau Trust requiring the respondent, Kent Robson to vacate Pukepoto No 8 B No 12; Pukepoto 8B4B; and Pukepoto 8B4A (“the lands”).

[2] Pukepoto 8B4A is 0.2023 hectares of land to the north of Kaitaia, Pukepoto No 8 B No 12 is 17.9149 hectares of land and Pukepoto 8B4B is 4.5657 hectares. All three blocks are Māori freehold land located in close proximity.

[3] The Whānau Trust is the sole owner of Pukepoto 8B4A, however the ownership of Pukepoto No 8 B No 12 and Pukepoto 8B4B is shared between the Whānau Trust and Aroha Popata as tenants in common. The Whānau Trust owns 77.75 shares out of a total of 80 shares in Pukepoto No 8 B No 12 and owns 71.24 shares out of a total of 75.417 shares in Pukepoto 8B4B. The remaining shares are owned by Aroha Popata, however she has since passed away and succession to her interests has not taken place.

[4] The respondent is a beneficiary of the Whānau Trust and was a trustee prior to 2015.

[5] The applicant says that the respondent is on the lands without authority and has created an environment where it is no longer safe for trustees and beneficiaries to go onto the lands. They say the respondent has been served with a trespass notice but that has been ignored.

[6] The issue for determination is therefore whether a permanent injunction sought by the applicant ought to be granted.

Applicant’s Evidence

[7] David Tapene is the other co-chairperson of the Whānau Trust and addressed the Court on behalf of the applicant at the hearing of 30 April 2019.

[8] The applicant’s evidence includes a series of emails between themselves and the respondent, as well as a private investigator and a member of the Police.

[9] On 5 February 2018, the applicant received an email from the respondent advising of his intention to occupy the lands and carry out repair and maintenance work. The applicant responded on 14 February 2018 querying the proposed occupation and advising that no maintenance work was to be carried out without their consent. In a further email sent on 26 February 2018, the applicant invited the respondent to provide a detailed description of the proposed maintenance work and cost.

[10] On 2 April 2018, the applicant was sent an email by Dana Robson, an occupant on the land, stating that the respondent had erected a tent on the land under a pohutukawa tree, and cut down fruit trees.

[11] Following that, the applicant sent an email to the respondent on 5 April 2018 advising that he was not authorised to reside on the land; for him to remove all machinery on the land; and to cease any work. The applicant then emailed a private investigator seeking assistance for the service of a trespass notice, who informed them that Police assistance was required.

[12] On 20 April 2018, the applicant says that the Whānau Trust was advised by Dana Robson that Mr Robson was in a rage and had pushed an old water tank into the house. The applicant claims that the respondent's behaviour resulted in Dana Robson and his partner leaving the lands as they felt unsafe.

[13] The Whānau Trust wrote a letter to the Police dated 20 April 2018, signed by three out of five trustees (excluding the applicant), seeking assistance to trespass the respondent from the lands. On 2 July 2018, the Police served Mr Robson with a copy of the trespass notice.

[14] The applicant says that the respondent has refused to leave the lands and believes that he now occupies the dwelling that was formally occupied by Dana Robson.

Respondent's Evidence

[15] The respondent says that he is from the land and has never left. He denies the allegations that he damaged the dwelling, or that he is residing in the dwelling on the land. He claims instead that he has carried out much needed maintenance work on the lands.

[16] The respondent says that he has invited the Whānau Trust to meet with him on the lands, however they have not accepted his invitation. He prepared a video, showing the current condition of the land and responding to the concerns raised by the applicant. The video also illustrates the respondent's knowledge of and special connection to the lands.

[17] From the video, it appears that maintenance work has been carried out including the clearing of weeds, drains and waterways. It also appears from the video that a caravan has been moved onto the lands and this is being occupied by the respondent.

The Law

[18] I have jurisdiction to grant a permanent injunction per s 19 of Te Ture Whenua Māori Act 1993. In *Taueki v Horowhenua Sailing Club – Horowheuna II (Lake) Block*, the Māori Appellate Court held, when seeking a permanent injunction, the applicant must first demonstrate a trespass has occurred.¹ If that is established, the Court then considers whether to exercise its discretion to grant an injunction.²

[19] I adopt that approach.

Discussion

Does the applicant have standing?

[20] The Whānau Trust and Aroha Popata are co-owners of two of the three blocks of land. They are tenants in common who enjoy a unity of possession and are equally entitled to occupy, use and enjoy all of the land. As Aroha Popata is deceased, her rights of possession cannot be enforced. On the basis that the Whānau Trust is entitled to the occupation of all of the land, I am satisfied that they have standing to exclude others from the land and can enforce that right through trespass.

Has a trespass occurred?

[21] In *Eriwata v Trustees of Waitara SD Sections 6 and 91 Land Trust*, the Māori Appellate Court held:³

¹ *Taueki v Horowhenua Sailing Club – Horowhenua II (Lake) Block* [2014] Māori Appellate Court MB 60 (2014 APPEAL 60) at [15].

² At [16].

³ *Eriwata v Trustees of Waitara SD Sections 6 and 91 Land Trust – Waitara SD Sections 6 and 91 Land*

[5] When trustees are appointed to an Ahu Whenua Trust, they take legal ownership. The owners in their shares, in the schedule of owners, have beneficial or equitable ownership but do not have legal ownership, and do not have the right to manage the land or to occupy the land. Trustees are empowered and indeed required to make decisions in relation to the land and they are often hard decisions. Their power and obligation to manage the land cannot be overridden by any owner or group of owners or even the Māori Land Court, so long as the trustees are acting within their terms of trust and the general law, and it reasonably appears that they are acting for the benefit of the beneficial owners as a whole. A meeting of owners cannot override the trustees. Decisions to be taken for the land are to be the decision of the trustees. They decide who can enter and who can reside there and how the land is managed.

[22] The trustees have produced meeting minutes from 2018 where Mr Robson's occupation of the land was discussed. While the minutes do not reflect any clear resolutions of the trustees requiring Mr Robson to vacate the lands, the intention of the trustees is set out in the letter to the Police dated 20 April 2018 seeking assistance to trespass Mr Robson. This letter is signed by a majority of trustees.

[23] The trustees of the Whānau Trust and Aroha Popata are the legal owners of the land. They can decide who can enter the land, who can reside there, and how the land is managed. The trustees have made it clear that they do not consent to Mr Robson remaining on the land.

[24] Mr Robson was served with a trespass notice on 2 July 2018, however, in spite of the notice, he remains on the land. Mr Robson has no authority to remain on the land without the consent of the trustees or Aroha Popata. I am satisfied that an action in trespass is made out.

Should I exercise my discretion to grant an injunction?

[25] The prima facie rule is that a land owner is entitled to an injunction to restrain a trespass.⁴ However, the Court still has discretion as to whether to grant the injunction. There is a good working rule that if an injury to the plaintiff is small, it can be compensated by a small monetary payment, and it will be oppressive to the defendant to grant an injunction, damages may be awarded in substitution for an injunction.⁵

Trust (2005) 15 Whanganui Appellate Court MB 192 (15 WGAP 192).

⁴ *Eriwata v Trustees of Waitara SD Sections 6 and 91 Land Trust – Waitara SD Sections 6 and 91 Land Trust* (2005) 15 Whanganui Appellate Court MB 192 (15 WGAP 192) at [8].

⁵ *Shelfer v City of London Electric Lighting Co* [1895] 1 Ch 287, [1891-4] All ER Rep 838 at 848. See *Te Hokowhitu v Proprietors of Matauri X – Matauri X* [2010] Māori Appellate Court MB 566 (2010 APPEAL 566).

[26] This is not a case where the good working rule applies. This is not a minor trespass. Mr Robson is living on the land without the consent of the trustees, and this trespass cannot be compensated by a small monetary payment.

[27] As injunctions are an equitable remedy, I must take into account any equitable considerations including the parties' conduct. These must also be balanced against the statutory objectives set out in the Preamble and ss 2 and 17 of the Act.

[28] The applicant contends that it is not safe for the trustees of the Whānau Trust or the beneficiaries to enter the lands while they are being occupied by the respondent. They also say that the Whānau Trust cannot develop the lands and carry out its intention to establish a papakainga for the benefit of all the beneficiaries until the respondent has vacated the lands. This is consistent with the kaupapa of the Act, promoting the retention of land in the hands of the owners and the effective use management and development of the land by or on behalf of the owners.

[29] The respondent says that he is carrying out much needed maintenance work on the lands, that the lands are his home, and that his knowledge and special relationship to the lands cannot be overlooked. However, while I have given this full weight, it cannot outweigh the right of the trustees to administer and develop the lands for the benefit of all the owners.

Decision

[30] Pursuant to s 19(1)(a) of Te Ture Whenua Maori Act 1993, I grant a permanent injunction requiring Kent Robson to vacate the lands Pukepoto No 8 B No 12; Pukepoto 8B 4B; and Pukepoto 8B 4A within 30 days from the date of this judgment, and to remove all of his possessions.

Pronounced at 4.00 pm in Whangarei on Thursday this 27th day of June 2019.

T M Wara
JUDGE