

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

**I TE KŌTI WHENUA MĀORI O AOTEAROA
TE ROHE O TE WAIARIKI**

A20170006137

UNDER Section 67, Te Ture Whenua Māori Act 1993
Rule 6.9, Māori Land Court Rules 2011

IN THE MATTER OF Lot 1 DPS 64109 and Lot 2 DPS 64109 (formerly
Part Rotomahana and Parekarangi 8)

BETWEEN JEAN CARSTON, PETER STAITE, DAVID
NIKORA, TERESSA HURIHANGANUI,
DOROTHY RAROA AND KATHLEEN PALMER
AS TRUSTEES OF LOT 1 DPS 64109 BLOCK
First Applicants

AND JEAN TANIRAU-CARSTON, LYNETTE
PALMER, PETER STAITE AND CHYNELLE
PICARD AS TRUSTEES OF WHAOA NO 1
LANDS TRUST
Second Applicants

AND ANDREW KUSABS, DONALD BENNETT,
CRAIG KUSABS, ROBERT MACFARLANE
AND WALLY LEE AS TRUSTEES OF
TUMUNUI LANDS TRUST
Respondents

Hearing: 175 Waiariki MB 183-190, 5 December 2017
184 Waiariki MB 32-36, 16 March 2018
(Heard at Rotorua)

Appearances: J Koning for First and Second Applicants
M McKechnie for Respondents

Judgment: 28 June 2018

JUDGMENT OF JUDGE C T COXHEAD

Tēnā koutou i ō tātou aituā maha e ngapu nei te whenua i tō rātou hinganga. Hēoi anō, e tāea te aha atu i te tangi, i te maumahara ki a rātou me tā rātou i mahi ai? Nō reira, waiho rātou ki a rātou, ko tātou ki a tātou, tēnā anō koutou

Hei tīmatanga kōrero - Introduction

[1] In 2007, the trustees of Whaoa No 1 Lands Trust filed an application concerning the Māori reservation located on the land formerly known as Part Rotomahana Parekarangi 8 (the block). Approximately 15 hectares of the Māori reservation was erroneously included in a lease to the Tumunui Lands Trust.¹ The trustees of Whaoa No 1 Lands Trust then initiated proceedings in the High Court.

[2] On 11 October 2011, I adjourned that application *sine die* pending the outcome of the High Court proceedings.² Heath J issued two judgments on 13 March 2017 and 27 July 2017 respectively dealing with those proceedings.³

[3] The trustees of Whaoa No 1 trust now seek to revive the Māori Land Court proceedings on the basis that this Court has the jurisdiction to resolve the outstanding matters.

[4] Tumunui Lands Trust sought and were granted leave to appeal the High Court judgments to the Court of Appeal.⁴

[5] On 14 May 2018 Mr McKechnie, on behalf of Tumunui Lands Trust filed a formal application for adjournment of the Māori Land Court proceedings pending the outcome of the Court of Appeal matters.

[6] The first and second applicants do not consent to the adjournment.

¹ A20070008019.

² 41 Waiariki MB 69-70 (41 WAR 69-70).

³ *Staitte v Kusabs* [2017] NZHC 416 and *Staitte v Kusabs* [2017] NZHC 1758.

⁴ *Staitte v Kusabs* [2018] NZCA 106.

Ko te kaupapa - The issue

[7] This issue for determination is whether I should grant the adjournment sought by the Tumunui Lands Trust.

Ngā kōrero a te tarati o Tumunui - Submissions for Tumunui Lands Trust

[8] Mr McKechnie submits that the outcome of the proceedings in the Court of Appeal will determine the future relationship of the second applicants with the Tumunui Lands Trust.

[9] In addition, counsel says that if the lease is terminated, or if it is to remain in place upon terms not acceptable to the parties, then Tumunui Lands Trust's involvement with the farm owned by the Whaoa No 1 Lands Trust will come to an end. In that event, counsel contends, the first applicants and second applicants ought to be able to resolve the issue between themselves.

[10] Mr McKechnie further submits that it would not be a wise use of judicial resources and funding to litigate this matter when it may be resolved as the result of the Court of Appeal judgment. He adds that there is no urgency in determining this application.

Ngā kōrero a ngā kaitono - Submissions for First and Second Applicants

[11] Mr Koning submits that the Court of Appeal proceedings do not relate to, or affect the outcome of the Māori Land Court matters. He further submits that the issues raised by the Tumunui Lands Trust in the amended appeal to the Court of Appeal do not overlap with, or otherwise affect, the relief sought by the first and second applicants in this application. The grounds of appeal, Mr Koning says, solely relate to the equitable remedy for a breach of fiduciary duty by Edward Moke and does not relate to the reserve claims.

[12] Counsel further submits that it is in the interest of justice for this Court to hear and determine the current application without adjournment. He argues that Heath J, in *Staitte v Kusabs* [2017] NZHC 416, recognised that this Court is the appropriate forum to deal with the reserve claims; and contends that this Court has the necessary jurisdiction over Māori freehold land to fully and finally deal with the ongoing disputes between the parties regarding the boundary and access to the Māori Reservation.

[13] Mr Koning states that the current proceedings concern four separate causes of action:

- (a) declarations under s 18(1)(a) relating to the wrongful inclusion of 15.8583 hectares of the block in Lot 2 DPS 64109 leased to the Tumunui Lands Trust;
- (b) claim under s 18(1)(c) for the injury caused to the block by the Tumunui Lands Trust's use of 15.8583 hectares for farming purposes between 1989 and 2018;
- (c) application for combined partition under ss 297, 298 and 301 to cancel the current titles to Lot 1 and 2 DP 64109 and provide for a new title to Rotomahana Parekarangi 8 that correctly delineates the area set apart by the *Gazette* notice dated 17 February 1986; and
- (d) application to lay out a Māori roadway under s 316 to provide reasonable and practical access to the block.

[14] Mr Koning contends that these claims clearly concern the liability of the Tumunui Lands Trust to the possession and use of 15.8583 hectares of the block between 1989 and 2018 and the liability of the Tumunui Lands Trust between 1989 and 2018 in preventing the beneficiaries from having reasonable and practical access to the block for the purposes set out in the *Gazette* notice. He adds that these proceedings will also determine what liability the Tumunui Lands Trust has in rectifying the title to Rotomahana Parekarangi 8 and the physical access to the block.

[15] Mr Koning therefore submits that a determination of the Court of Appeal regarding the future relationship between the Whaoa No 1 Lands Trust and the Tumunui Lands Trust will not determine the liability of the Tumunui Lands Trust to the trustees of the Māori Reservation under application A20170006137.

[16] In addition, counsel submits that it cannot be seriously argued by the Tumunui Lands Trust that it had no involvement in or responsibility for the subdivision of the block. Mr Koning also notes that the suggestion that somehow the Whaoa No 1 Lands Trust and the Māori Reservation Trust have common beneficiaries and the same chairman fails to

recognise that in law these two trusts have a separate status, distinct purposes and different beneficiaries.

Te Ture - The Law

[17] Rule 6.9 of the Māori Land Court Rules 2011 provides guidance with regards to granting adjournments.

6.9 Court may adjourn hearing

(1) The Court may, on the application of a party or on its own initiative, either before or during a hearing, adjourn an application—

- (a) to another ordinary sitting of the Court; or
- (b) to a special sitting; or
- (c) if the circumstances require, to a date and place to be fixed.

(2) A party seeking an adjournment must, if possible, notify the other parties of the intention to seek an adjournment and must attempt to obtain the consent of the other parties to the adjournment.

(3) An application that has been adjourned to a date and place to be fixed may be brought on for hearing on the application of any party or on the direction of the Court, and may be heard at the time and place and on the notice that the Court may direct.

[18] The question of the grant of an adjournment is a matter for the Court to decide. It is not granted as of right. The power to adjourn is discretionary and in exercising the jurisdiction to adjourn, regard must always be had to considerations of fairness and balance between the parties. The primary question is whether an adjournment is necessary in order to do justice between the parties. ⁵

Kōrerorero - Discussion

[19] As outlined above, this application has been before the Court for some time now. The application was filed in 2007 and adjourned sine die in 2011 at the request of the Whaoa No 1 Lands Trust pending the outcome of the High Court matters involving the parties.

⁵ *Taueki v Horowhenua II Part Reservation Trust* [2016] Māori Appellate Court MB 184 (2016 APPEAL 184) at [21]-[22].

[20] The High Court issued judgment in 2017 and Tumunui Lands Trust now seek an appeal to the Court of Appeal.

[21] Mr Koning argues that the proceedings have been before the Court for some time and should not be further delayed by the Court of Appeal proceedings. He says that to do so would be unjust to the beneficiaries of the trusts given that they have already been deprived of use and access to the block for a long period of time.

[22] While these matters have been in train for some time now, I do not understand there to be urgent matters requiring immediate attention. It is my understanding that the Whaoa No 1 Lands Trust in fact sought matters be heard in the High Court and therefore deferred hearing of this matter in this Court. These proceedings were accordingly adjourned sine die. I do not recall any sense of urgency about this application at that time.

[23] Mr Koning also argues that the issues to be dealt with by the Court of Appeal are different to those matters to be dealt with in the Māori Land Court.

[24] Mr McKechnie submits that the outcome of the proceedings in the Court of Appeal will affect the relationship of the second applicants with the Tumunui Lands Trust and may render continuation of these proceedings unnecessary.

[25] In my view, there will undoubtedly be some overlap between these proceedings and the Court of Appeal proceedings. It is difficult to see how the issues before the Court of Appeal and the issues before the Māori Land Court can remain totally separate and distinctive, and void of any overlap at all.

[26] I agree with counsel for Tumunui Lands Trust that it would not be a wise use of judicial resources and funding to litigate this matter when a related and associated matter is being litigated in the Court of Appeal.

[27] I consider that justice between the parties will be best served by awaiting the outcome of the Court of Appeal proceedings.

Kupu whakatau - Decision

[28] This matter is therefore adjourned pending the outcome of the Court of Appeal matter.

Pronounced at 9:00am in Rotorua on this 28th day of June 2018.

C T Coxhead
JUDGE