

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

A20190004639

UNDER Section 19, Te Ture Whenua Māori Act 1993

IN THE MATTER OF Waipuka 3A3A Block

BETWEEN CHRISTINE KIDWELL, FLORENCE
KARAITIANA, SAMUEL PITMAN,
WILLIAM KARAITIANA AND ROBERT
CARROLL AS AGENTS OF WAIPUKA
3A3A
Applicants

AND SHARYN KARAITIANA AND MOARI
KARAITIANA ALSO KNOWN AS
MAURICE KARAITIANA
Respondents

Hearings: 16 May 2019, 76 Tākitimu MB 9-14
5 June 2019, 76 Tākitimu MB 74-78
(Heard at Hastings)

Appearances: M Wenley for Applicant
R Du Preez for Respondents

Judgment 30 August 2019

JUDGMENT OF JUDGE L R HARVEY

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Introduction

[1] The agents appointed to Waipuka 3A3A seek an injunction to remove one of the land's owners, Moari Karaitiana, and his daughter Sharyn Karaitiana, who were occupying the land at the time of the application. They say there has been damage to the land and an eviction notice has been served.

[2] The application is opposed by the respondents who argue they were given permission to reside on the land by the majority of the owners. They say the owners do not agree with the appointment of agents and are now seeking a Māori Incorporation for the land. They therefore seek to maintain the status quo pending incorporation.

[3] Since the hearing, the applicant has confirmed to the case manager that the respondents appear to have vacated the land and are no longer in residence. Even so, this decision formally disposes of the application for injunction.

Background

[4] Waipuka 3A3A is General land owned by Māori. There are currently 56 owners on the record of title held with Land Information New Zealand.¹ The block was created by partition order on 23 November 1906.² On 25 November 1970, a declaration was issued pursuant to s 6 of the Māori Affairs Amendment Act 1967, that the land shall cease to be Māori land.

[5] Applications were filed in 2012 and 2016, seeking to constitute a formal management structure over the land. However, at a meeting of owners held in 2017, a motion was passed to appoint agents to act on behalf of the owners for limited purposes. Charmaine Heather, Florence Karaitiana, Bill Karaitiana and Janice Carroll were then appointed by the Court as agents.³ Two of the agents were discharged on 1 August 2018 and a further three appointed on 1 May 2019.⁴ The current agents are Florence Karaitiana, William Karaitiana, Samuel Pitman, Christine Kidwell and Robert Carroll.⁵ The order of appointment records that the agents are appointed to represent, negotiate and make agreements on behalf of Waipuka 3A3A.

¹ HBK3/609

² 67 Napier MB 20 (67 NA 20)

³ 61 Tākitimu MB 114-130 (61 TKT 114-130)

⁴ 71 Tākitimu MB 73-108 (71 TKT 73-108)

⁵ 75 Tākitimu MB 272-307 (75 TKT 272-307)

Procedural history

[6] The application for an urgent injunction was filed by the agents of Waipuka 3A3A on 13 May 2019 and subsequently served on the respondents by the Court. An initial hearing was held on 16 May 2019.⁶ The respondents confirmed that they wished to seek legal advice and sought an adjournment. I indicated that counsel would also need to be appointed to represent the agents. I granted the adjournment and set the matter for hearing on 23 May 2019.

[7] The respondents then instructed counsel, however, due to the lack of availability of suitably experienced and unconflicted solicitors in Hawkes Bay, counsel were not able to be appointed for the agents prior to the scheduled hearing. I granted a further adjournment to allow time for counsel to be appointed.⁷

[8] Counsel was subsequently appointed for the agents and a final hearing held on 5 June 2019.⁸ At the conclusion of the matter, I indicated that a decision would issue in due course.

[9] The issues for determination are whether the Court has jurisdiction to grant an injunction and, if so, whether an injunction should be granted for the removal of the respondents from their occupation of the land.

Applicant's submissions

[10] The application filed by the agents records that an eviction notice was served on Sharyn Karaitiana, her partner and others on 12 May 2019. However, it was said that Ms Karaitiana advised that she would “burn the house down” before she is removed. While serving the eviction notice at the property, the agents noticed that the whānau wāhi tapu tree and the willow tree had been removed. They say they have not been given access to the house to determine what needs to be fixed and seek an urgent injunction to stop those in the house from doing any further damage to the house or property.

[11] Mr Wenley for the agents submitted that the Court appointed agents with various duties and they are obliged to account and manage for the benefit of the owners. Their position is effectively that of trustees, as they do not hold anything in their own right. Mr Wenley noted that as the land is General land owned by Māori, there may be an issue in terms of

⁶ 76 Tākitimu MB 9-14 (76 TKT 9-14)

⁷ 76 Tākitimu MB 18-19 (76 TKT 18-19)

⁸ 76 Tākitimu MB 74-78 (76 TKT 74-78)

jurisdiction under s 19, however, relying on the decision of this Court in *Kirkham v Huata – Lot 2 Deposited Plan 1996*, he argued that the Court has jurisdiction under s 237 to grant the orders sought.⁹

[12] Mr Wenley argued that the respondent Sharyn Karaitiana is not an owner in the land and her father Maurice Karaitiana is not and cannot reside there. He says there has been no opposition and therefore, on the face of it, the applicants are entitled to the orders sought.

Respondent’s submissions

[13] Ms Du Preez for the respondents also made her submissions orally at the hearing. She argued that, while the respondents acknowledge that agents have been appointed, the majority of the whānau did not agree with their appointment and are against having any trustees. The owners instead want the ownership in their own hands and to be able to make the decisions. Ms Du Preez also noted that there is currently an application before the Court to incorporate the land as a Māori incorporation.

[14] Counsel submitted that the advice she has received is that the whānau, who are the majority of the owners, gave permission for the respondents and their whānau to live on the property. The arrangement was that the respondents could live on the land and would maintain the property and dwelling by completing repairs and maintenance. While Mr Karaitiana is not currently able to reside on the land, due to conditions imposed by the District Court in relation to separate proceedings, it was said that he is there working on the property. Counsel argued for the status quo to be maintained until finalisation of the land as a Māori incorporation.

[15] Ms Du Preez also submitted that the agents have not been complying with their obligations under s 187 of the Act, in terms of employing reasonable means to inform the owners of their actions and in ascertaining the owners’ views. She argued that the owners should have been advised before the eviction notice was served on the respondents and an injunction sought.

Discussion

[16] Section 19 provides jurisdiction to the Court for the grant of injunctions. It states:

⁹ *Kirkham v Huata – Lot 2 Deposited Plan 1996 formerly known as Mangaroa 26N2 Block* (2016) 54 Tākitimu MB 104 (54 TKT 104).

19 Jurisdiction in respect of injunctions

- (1) The court, on application made by any person interested or by the Registrar of the court, or of its own motion, may at any time issue an order by way of injunction—
 - (a) against any person in respect of any actual or threatened trespass or other injury to any Maori freehold land, Maori reservation, or wahi tapu; or
 - (b) prohibiting any person, where proceedings are pending before the court or the Chief Judge, from dealing with or doing any injury to any property that is the subject matter of the proceedings or that may be affected by any order that may be made in the proceedings; or
 - (c) prohibiting any owner or any other person or persons without lawful authority from cutting or removing, or authorising the cutting or removal, or otherwise making any disposition, of any timber trees, timber, or other wood, or any flax, tree ferns, sand, topsoil, metal, minerals, or other substances whether usually quarried or mined or not, on or from any Maori freehold land; or
 - (d) prohibiting the distribution, by any trustee or agent, of rent, purchase money, royalties, or other proceeds of the alienation of land, or of any compensation payable in respect of other revenue derived from the land, affected by any order to which an application under section 45 or an appeal under Part 2 relates.
- (2) Notwithstanding anything in the Crown Proceedings Act 1950, any injunction made by the court under this section may be expressed to be binding on the Māori Trustee.
- (3) Any injunction made by the court under this section may be expressed to be of interim effect only.
- (4) Every injunction made by the court under this section that is not expressed to be of interim effect only shall be of final effect.

[17] The relevant provision in the present case is s 19(1)(a) and arguably s 19(1)(c). However, it is clear from that provision that the Court's jurisdiction to grant an injunction in respect of any trespass or other injury to the land, is limited to Māori freehold land, Māori reservations or wāhi tapu. As the land is General land owned by Māori, the Court does not have jurisdiction to grant an injunction per s 19(1)(a).

[18] At hearing, counsel for the applicants referred to s 237 as providing jurisdiction for the Court to grant the injunction, relying on my decision in *Kirkham v Huata – Lot 2 Deposited Plan 1996*.¹⁰ Sections 236 and 237 provide:

236 Application of sections 237 to 245

- (1) Subject to subsection (2), sections 237 to 245 shall apply to the following trusts:
 - (a) every trust constituted under this Part:
 - (b) every other trust constituted in respect of any Maori land:

¹⁰ *Kirkham v Huata – Lot 2 Deposited Plan 1996 formerly known as Mangaroa 26N2 Block* (2016) 54 Tākitimu MB 104 (54 TKT 104).

- (c) every other trust constituted in respect of any General land owned by Maori.
- (2) Nothing in sections 237 to 245 applies to any trust created by section 250(4).

237 Jurisdiction of court generally

- (1) Subject to the express provisions of this Part, in respect of any trust to which this Part applies, the Maori Land Court shall have and may exercise all the same powers and authorities as the High Court has (whether by statute or by any rule of law or by virtue of its inherent jurisdiction) in respect of trusts generally.
- (2) Nothing in subsection (1) shall limit or affect the jurisdiction of the High Court.

[19] Essentially, s 237 allows the Court to exercise all the same powers and authorities as the High Court, including its inherent jurisdiction, in respect of trusts generally.

[20] In *Kirkham v Huata – Lot 2 Deposited Plan 1996*, this Court an application seeking determinations per s 18 in relation to a lease over General land owned by Māori which was vested in an ahu whenua trust.¹¹ It was determined that the Court did not have jurisdiction under s 18 of the Act due to the specific wording of the provision but also considered whether there was alternative jurisdiction under s 237. It was noted that trustees could seek directions under s 66 of the Trustee Act 1956 and, after having regard to the general objectives of the Act, in particular s 17, the application was varied to include an application per s 237 seeking directions as to the expiry date of the lease.

[21] In *Haira v Haira – Kapenga A7*, involved an application which sought to invoke s 237 to remove occupiers and grant an injunction preventing them from entering the block, which was General land administered by an ahu whenua trust.¹² In considering the extent of the Court's jurisdiction per s 237 and whether it applied to General land administered by Māori land trusts, the following comments were made:

[40] Taking into account the provisions referred to above, my preliminary conclusion is that the trustees of ahu whenua trusts holding General land for the benefit of Māori beneficiaries are not precluded from seeking practical remedies to disputes that can arise from time to time from this Court. That would arguably be contrary to the intention of the Legislature and would render illusory the ability of beneficiaries of many ahu whenua trusts holding General land to seek solutions. The costs alone of seeking redress in the High Court for example would be prohibitive for a great many ahu whenua trusts let alone their beneficiaries. If the resolution of disputes over General land held by ahu whenua trustees were to be beyond the jurisdiction of this Court then it would not be unreasonable to expect that the Act would prescribe such limitations. This issue is considered further in this judgment.

...

¹¹ Ibid.

¹² *Haira v Haira – Kapenga A7 and Other Blocks* (2016) 149 Waiariki MB 259 (149 WAR 259)

[44] Having considered the decisions referred to my conclusion is that the Court has the jurisdiction per s 237 to exercise all the powers of the High Court relating to trusts including its inherent jurisdiction and that such jurisdiction is to be applied to particular issues and problems that arise in the administration of trusts.

[22] However, I went on to consider the particular provisions under which the orders sought would be normally dealt with, namely ss 18(1)(a), (c), and 20. I found:¹³

[54] As can be seen the Court's jurisdiction to make the types of orders sought by the applicant is *prima facie* restricted to Māori freehold land. Given that this block is General land held under administration of an ahu whenua trust it would appear that those provisions do not apply here. Moreover, in view of the fact that the Court's specific jurisdiction per s 18, 19 and 20 of the Act refers to Māori freehold land I cannot, regrettably, see how the Court has the necessary jurisdiction to make the orders as sought per s 237 alone solely because the land is administered by an ahu whenua trust.

[23] As these authorities make clear, where the Act makes specific provision for the types of orders sought by the application and limits the Court's jurisdiction to Māori land, s 237 of the Act on its own cannot confer the necessary jurisdiction. To do so would be to circumvent the provisions of the Act. Added to this, is the fact that in the present case the land is not administered by an ahu whenua trust, but rather has agents appointed to represent and negotiate for the owners for specific purposes. The jurisdiction provided under s 237 is clearly in respect of trusts. While the agents do have duties and obligations to the owners, I do not consider that such agency falls within the definition in s 236 to be a "trust constituted in respect of General land owned by Māori".

Decision

[24] The application is dismissed.

[25] There will be no order as to costs since both parties received grants from the Special Aid Fund.

Pronounced at 11.55am in Rotorua on Friday this 30th day of August 2019

L R Harvey
JUDGE

¹³ Ibid