

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

**A20160003453  
A20160003598**

UNDER Section 244 and 151 of Te Ture Whenua  
Māori Act 1993

IN THE MATTER OF Tangonui Falkland Kingi Whānau Trust  
and Te Koutu L Section No. 34 Block

AND WALTER WILLIAM KINGI  
Applicant

Judgment: 26 September 2016

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**RESERVED JUDGMENT OF JUDGE P J SAVAGE**

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## Introduction

[1] This is an application brought on behalf of the trustees of a whānau trust. One of the assets of this trust is a vacant residential section in Rotorua. The trustees want to sell the land to one of their beneficial owners. I can understand their motivation because the land is unproductive and they must be paying rates upon it.

[2] There are in fact two applications, the second being contingent on the success of the first.

[3] The present Trust Order provides as follows:

The trustees shall not alienate the whole or any part of the lands of the Trust by sale or gift other than:

6.1 By way of exchange.

6.2 In settlement of a propose acquisition pursuant to the Public Works Act or Resource Management Act or other statutory authority.

6.3 In partition

6.4 By way of minor boundary adjustment in terms of section 228 of the Act.

[4] The trustees seek to vary the Trust Order with the addition of clause 6.5 as follows:

6.5 To a beneficiary of the Tangonui Falkland Kingi Whānau Trust.

[5] The senior members of the whānau who it seems speak for their lines, are united. There is sufficient degree of support as will allow me to vary the trust order. There is a valuation which generally supports the price although it is a year out of date.

[6] The other application seeks confirmation of the alienation for an agreement for sale and purchase which has already been executed. There is an issue regarding the timeliness of that application but it is not now important.

## Discussion

[7] The proposition that a whānau trust can sell land is somewhat startling because the intention of Te Ture Whenua Māori Act 1993, (“the Act”), is that the land interests are to be held in the trust for this and each successive generation, or to put it another way, for the uri of the named tupuna.

[8] If I had got to the point where I found I had jurisdiction to make the orders sought, I would be concerned to see that the land is not turned into money and distributed to the present generation. In the exercise of my discretion I would be wanting to see that other land or shares in land in the appropriate rohe were obtained as a result of the transaction.

[9] It was for that very reason that I asked counsel what it was intended that the money be used for. His response was that he had no instructions.

[10] That being the case, there seems to be a very real likelihood that the money would be distributed in some way to the beneficiaries to the effect that it was a misappropriation by the present generation from the generations to come.

[11] It appears that I am being asked to vary the Trust Order to allow this transaction to proceed when there is no evidence to suggest that the Act has, or will be complied with. In other words I am being asked to make an order that contravenes the Act.

[12] To explain:

Section 150A(1) of Te Ture Whenua Māori Act 1993 reads:

- (1) The trustees of a trust constituted under Part 12 must not alienate Māori freehold land vested in them as trustees-
  - (a) by sale or gift, unless the sale or gift has the consent of-
    - (i) at least three-quarters of the owners, if no owner has a defined share in the land; or

- (ii) The persons who together own at least 75% of the beneficial freehold interest in the land:

[13] There is no evidence before me that 75% of either of the classes of owners in subparagraph (a)(i) or (a)(ii) have consented.

[14] I should state that I am by no means convinced that the beneficiaries of a whānau trust do in fact fall within 150A(1) at all, but it is not necessary for the purposes of this case for me to determine whether that is the case. That is an exercise in statutory interpretation for another day.

[15] For the purposes of this case I will presume that the beneficial owners of a whānau trust do fall within one of the two classes referred to. I am therefore being asked to allow a transaction to proceed when there is no evidence of a 75% consent.

[16] It would be difficult, in my view, to obtain consent in any event, because as families expand, as they usually do, a high percentage of the beneficiaries will be minors and therefore incapable of giving consent.

### **Decision**

[17] I therefore hold that the proposed sale in its present form is unlawful and for that reason alone I cannot vary the Trust Order as sought.

[18] Even if it were lawful I would exercise my discretion and not grant the Order sought as a matter of discretion.

### **Result**

[19] Both applications are dismissed.

Pronounced at 1.30pm in Wellington this 26<sup>th</sup> day of September 2016

P J Savage  
**JUDGE**