

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

**A20180005607  
APPEAL 2018/11**

UNDER Section 79, Te Ture Whenua Māori Act 1993

IN THE MATTER OF TE RŪNANGA O NGĀTI MARU (TARANAKI)  
TRUST

BETWEEN HAEMONA MARUERA  
Appellant

AND TE RŪNANGA O NGĀTI MARU (TARANAKI)  
TRUST  
Respondent

Hearing: On the papers

Court: Judge Wainwright (Presiding)  
Judge Coxhead  
Judge Doogan

Appearances: J Kahukiwa for Appellant  
S Hughes for Respondent

Judgment: 24 January 2019

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**JUDGMENT OF THE COURT AS TO COSTS**

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Copies to:  
J Kahukiwa, Corban Revell Lawyers, DX DP 92558, Auckland [jkahukiwa@corbanrevell.co.nz](mailto:jkahukiwa@corbanrevell.co.nz);  
S Hughes QC, Bank Chambers PO Box 8213, New Plymouth [susan@bankchambers.co.nz](mailto:susan@bankchambers.co.nz);

## Hei tīmatanga kōrero - Introduction

[1] In our reserved judgment of 9 November 2018, we dismissed an appeal filed by Haemona Maruera, challenging a decision made under s 237 of the Te Ture Whenua Māori Act 1993.<sup>1</sup>

[2] We directed counsel to file memoranda in relation to costs within 14 days. Ms Hughes, counsel for the respondents, filed information as to actual costs incurred. Mr Kahukiwa, on behalf of the appellant did not file any submissions.

## Te Ture - The Law

[3] Section 79(1) of the Act sets out the Court's jurisdiction as to costs:

### 79 Orders as to costs

(1) In any proceedings, the court may make such order as it thinks just as to the payment of the costs of those proceedings, or of any proceedings or matters incidental or preliminary to them, by or to any person who is or was a party to those proceedings or to whom leave has been granted by the court to be heard.

...

[4] The principles that apply to an award of costs are well established. In *Samuels v Matauri X Incorporation – Matauri X Incorporation*, the Māori Appellate Court summarised the relevant principles as follows:<sup>2</sup>

- (a) The Court has an absolute and unlimited discretion as to costs;
- (b) Costs normally follow the event;
- (c) A successful party should be awarded a reasonable contribution to the costs that were actually and reasonably incurred;
- (d) The Māori Land Court has a role in facilitating amicable, ongoing relationships between parties involved together in land ownership, and these concerns may sometimes make awards of costs inappropriate. However, where litigation has been conducted similarly to litigation in the ordinary Courts, the same principles as to costs will apply; and

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<sup>1</sup> *Maruera v Te Rūnanga o Ngāti Maru (Taranaki) Trust – Te Runanga o Ngāti Maru (Taranaki) Trust* [2018] Māori Appellate Court MB 552 (2018 APPEAL 552).

<sup>2</sup> *Samuels v Matauri X Incorporation – Matauri X Incorporation* (2009) 7 Taitokerau Appellate MB 216 (7 APWH 216) at [8] – [14].

- (e) There is certainly no basis for departure from the ordinary rules where the proceedings were difficult and hard fought, and where the applicants succeeded in the face of serious and concerted opposition.

[5] Further, as to the principles regarding the level of the award of costs, the Court has an absolute and unlimited discretion. The Court generally looks to what is just in the circumstances, the nature and course of the proceedings and the conduct of the parties.<sup>3</sup>

[6] A two-step approach is required in determining costs. The Court must first determine whether costs should be awarded and if the answer is yes, then the Court moves to consider the level of costs that should be awarded.

### **Ngā kōrerorero - Discussion**

[7] In our view, the respondents are entitled to costs. They are the successful party and, in line with ordinary principles, costs follow the event. Both parties were represented by counsel. We note, this is not a situation involving close familial relationships, where an award of costs would be inappropriate.

[8] The established rule in relation to party costs is that a successful party should be awarded a reasonable contribution to the costs they have actually and reasonably incurred.<sup>4</sup> Ms Hughes claims costs in the amount of \$3,795.00, including GST. Mr Kahukiwa made no submissions in reply.

[9] Taking into account the circumstances, we consider an award of 60 per cent of the respondents' actual costs to be reasonable.

### **Kupu whakatau - Decision**

[10] Accordingly, pursuant to s 79 of Te Ture Whenua Māori Act 1993, there is an order that the respondents are awarded costs in the total sum of \$2,277.00.

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<sup>3</sup> *Samuels v Matauri X Incorporation – Matauri X Incorporation* (2009) 7 Taitokerau Appellate MB 216 (7 APWH 216) at [13]; See also *De Loree v Mokomoko and others – Hiwarau C* (2008) 11 Waiariki Appellate MB 249 (11 AP 249).

<sup>4</sup> *Samuels v Matauri X Incorporation – Matauri X Incorporation* (2009) 7 Taitokerau Appellate MB 216 (7 APWH 216) at [10].

Pronounced at 10:58 am in Wellington on this 24<sup>th</sup> day of January 2019.

C M Wainwright  
**JUDGE**

C T Coxhead  
**JUDGE**

M J Doogan  
**JUDGE**